



भारत का राजपत्र The Gazette of India

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं० 19]
No. 19]

नई दिल्ली, शनिवार, मई 9, 1992/वैशाख 19, 1914
NEW DELHI, SATURDAY, MAY 9, 1992/VAISHAKHA 19, 1914

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह असल संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (II) PART II—Section 3—Sub-Section (ii)

(रक्षा मंत्रालय को छोड़कर) भारत सरकार के मंत्रालयों द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications issued by the Ministries of the Government of India (other than the
Ministry of Defence)

कार्मिक, लोक शिफायत तथा पेंशन मंत्रालय
(कार्मिक और प्रशिक्षण विभाग)
आदेश

नई दिल्ली, 20 अप्रैल, 1992

MINISTRY OF PERSONNEL, P. C. & PENSIONS

(Department of Personnel & Training)

ORDER

New Delhi, the 20th April, 1992

का.प्रा. 1201—केन्द्रीय सरकार दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए अधिसूचना संख्या सी.जी. 92-69-वी.एम.एफ-2992-2940 (डी)-7 दिनांक 10-4-92 द्वारा प्राप्त गुजरात राज्य सरकार की सहमति से दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और अधिकारिता का विस्तार भारतीय दंड संहिता (1860 का 45) की धारा 302 के साथ पठित भारतीय दंड संहिता की धारा 4 के अन्तर्गत दंडनीय अपराधों और पुलिस थाना चिल्की, जिला वल्साद, गुजरात के प्रथम सी.आर. सं. 4/92 द्वारा वर्ज मामले में उन्हीं तथ्यों से उत्पन्न होने वाले वैसे ही संश्लेषण के अनुक्रम में किए गए प्रयत्नों, दुष्प्रेरणों और पड़वनों से संबंधित अथवा उपर्युक्त अपराध तथा अपराधों के अन्वेषण के लिए सम्पूर्ण गुजरात राज्य पर करती है।

S.O. 1201.—In exercise of the powers conferred by Sub-section (1) of Section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946) the Central Government with the consent of the State Government of Gujarat vide Notification No. G-92-69-VSF/2992-2940(D) dated 10-4-1992 hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Gujarat for investigation of offences punishable under section 302 Indian Penal Code (45 of 1860) read with Section 4 of Indian Penal Code and attempts, abetments and conspiracies in relation to or in connection with one or more of the offences mentioned above and any other offence or offences committed in the course of the same transaction arising out of the same facts in the case registered vide Ist CR No. 4/92 of Chilkli Police Station, District Valsad of Gujarat.

[संख्या 228/13/92-ए.वी.डी.-II]

ए.सी. शर्मा, अवसर सचिव

[No. 228/13/92-AVD. II]

A. C. SHARMA, Under Secy.

वित्त मंत्रालय

(राजस्व विभाग)

मायकर

नई दिल्ली, 26 फरवरी, 1992

का.भा. 1202—मायकर अधिनियम, 1961 (1961 का 43) की धारा 80 जी की उपधारा (2) के खंड (बी) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्वारा "अरुलमिगु नराम्बुनाथ स्वामी मन्दिर, तिरुपुदुमैरुदुर" को समूचे तमिलनाडु राज्य में पुरातात्विक महत्व तथा श्रद्धा प्राप्त सार्वजनिक पूजास्थल होने के निमित्त उक्त उपखंड के प्रयोजनार्थ अधिसूचित करती है।

[सं. 9002(फा.सं. 176/13/92-मायकर नि. 1)]

शरत चन्द्र, प्रवर सचिव

MINISTRY OF FINANCE

(Department of Revenue)

(INCOME-TAX)

New Delhi, the 26th February, 1992

S.O. 1202.—In exercise of the powers conferred by clause (b) of sub-section (2) of Section 80G of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies the "Arulmigu Narambunathaswamy Temple, Thirupudaimarudur" to be a place of archaeological importance and public worship of renown throughout the State of Tamilnadu for the purpose of the said Section.

[No. 9002 (F. No. 176/13/92-IT.A.I.)]

SHARAT CHANDRA, Under Secy.

आदेश

नई दिल्ली, 22 अप्रैल, 1992

स्टाम्प

का.भा. 1203.—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उपधारा (1) के खंड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, दि. होटल कॉर्पोरेशन ऑफ इण्डिया लिमिटेड, बम्बई को एक लाख पाँच हजार रुपये मात्र के उक्त समेकित स्टाम्प शुल्क का भुगतान करने की अनुमति प्रदान करती है जो उक्त कॉर्पोरेशन द्वारा जारी किए जाने वाले एक करोड़ बीस लाख रुपये मात्र के कुल मूल्य के कम संख्या 1 से 1,40,000 तक के स्टेशन पत्रों के संबंध में एक डिबेन्चर प्रमाण पत्र पर स्टाम्प शुल्क के कारण प्रभावी है।

[सं. 6/92-स्टाम्प फा. सं. 33/70/90-वि.क.]

आत्मा राम, प्रवर सचिव

ORDER

New Delhi, the 22nd April, 1992

STAMPS

S.O. 1203.—In exercise of the powers conferred by clause (b) of sub-section (1) of section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby permits the Hotel Corporation of India Limited, Bombay to pay consolidated stamp duty of rupees one lakh and five thousand only, chargeable on account of the stamp duty on one debenture certificate in respect of 1,40,000 debentures

bearing serial numbers 1 to 1,40,000 of the face value of rupees one hundred each of the aggregate face value of rupees one crore and forty lakh only to be issued by the said corporation.

[No. 6/92-Stamp F. No. 33/70/90-ST.]

ATMA RAM, Under Secy.

(आर्थिक कार्य विभाग)

(बैंकिंग प्रभाग)

नई दिल्ली, 16 अप्रैल, 1992

का.भा. 1204.—राष्ट्रीय आवास बैंक अधिनियम, 1987 (1987 का 53) की धारा 6 की उपधारा (1) के खंड (ख) के अनुसरण में केन्द्रीय सरकार, भारतीय रिजर्व बैंक के साथ परामर्श करने के पश्चात् एतद्वारा, श्री एन.एम. बुच, अध्यक्ष, राष्ट्रीय मानव व्यवस्थापन और परिवरण, केन्द्र ई-5A, गिरिश कुंज, अररा कॉलोनी, भोपाल-462 016 (म.प्र.) को 16 अप्रैल, 1992 से आरम्भ होने वाली तीन वर्ष की अवधि के लिए राष्ट्रीय आवास बैंक के निदेशक मंडल में निदेशक के रूप में नियुक्त करती है।

[सं. 7/2/88-बी.ओ.-1]

एम. एस. सीतारामन, प्रवर सचिव

(Department of Economic Affairs)

(Banking Division)

New Delhi, the 16th April, 1992

S.O. 1204.—In pursuance of clause (b) of sub-section (1) of Section 6 of the National Housing Bank Act, 1987 (No. 53 of 1987), the Central Government, in consultation with the Reserve Bank of India, hereby appoints Shri M. N. Buch, Chairman, National Centre for Human Settlements and Environment, E-5A, Girish Kunj, Arera Colony, Bhopal-462016 (M.P.), as a Director on the Board of Directors of the National Housing Bank, for a period of three years commencing on 16th April, 1992.

[F. No. 7/2/88-B. O.]

M. S. SEETHARAMAN, Under Secy.

आदेश

नई दिल्ली, 20 अप्रैल, 1992

का.भा. 1205.—औद्योगिक वित्त निगम अधिनियम, 1948 की धारा 10A की उपधारा (2क) के उपबन्धों के अनुसरण में भारतीय औद्योगिक वित्त निगम के अध्यक्ष श्री डी.एन. डावर को भारतीय औद्योगिक वित्त निगम के अध्यक्ष के कार्यालय को 20 अप्रैल, 1992 को छोड़ने की अनुमति दी गई है। नियमित अध्यक्ष की नियुक्ति किए जाने तक यह निर्णय लिया गया है कि डा. पी. जे. नायक, संयुक्त सचिव, वित्त मंत्रालय, आर्थिक कार्य विभाग (बैंकिंग प्रभाग) नई दिल्ली 21 अप्रैल, 1992 से अगला आदेश जारी होने तक संयुक्त सचिव के रूप में अपने कार्यों के साथ-साथ भारतीय औद्योगिक वित्त निगम के अध्यक्ष पद के वर्तमान कर्तव्य भी करेंगे।

[फा सं. 7/9/92-बी.ओ.-1]

के.जी. गोयल, निदेशक

ORDER

New Delhi, the 20th April, 1992

S.O. 1205.—In pursuance of the provisions of Sub-section 2A) of Section 10A of the Industrial Finance Corporation

Act, 1948, Shri D. N. Davar, Chairman, Industrial Finance Corporation of India, has been permitted to relinquish the office of Chairman, Industrial Finance Corporation of India, on the 20th April, 1992. Until the appointment of a regular Chairman, it has been decided that Dr. P. J. Nayak, Joint Secretary, Ministry of Finance, Department of Economic Affairs, (Banking Division), New Delhi will hold the current charge of the post of Chairman, Industrial Finance Corporation of India, in addition to his duties as Joint Secretary, with effect from 21st April, 1992, and until further orders.

[F. No. 7/9/92-BO. I]

K. G. GOEL, Director

नई दिल्ली, 20 अप्रैल, 1992

का.घा. 1206.—भारतीय स्टेट बैंक (अनुषंगी बैंक) अधिनियम, 1959 (1959 का 38) की धारा 26 की उप धारा (2क) के साथ पठित धारा 25 की उप धारा (1) के खण्ड (गक) के अनुसरण में केन्द्रीय सरकार, एतद्वारा स्टेट बैंक ऑफ़ सौराष्ट्र के कर्मकार कर्मचारियों में से श्री एच. पी. त्रिवेदी, मुख्य-खातांची, स्टेट बैंक आफ़. सौराष्ट्र, औद्योगिक वित्त शाखा, अहमदाबाद को, श्री आर.बी. भट्ट के स्थान पर, जिन्हें भारत सरकार, वित्त मंत्रालय, आर्थिक कार्य विभाग (बैंकिंग प्रभाग) की दिनांक 1 जून, 1988 की अधिसूचना संख्या 15/4/87-आई.आर. के तहत नियुक्त किया गया था, 20 अप्रैल, 1992 से 19 अप्रैल, 1995 को समाप्त होने वाली 3 वर्ष की अवधि के लिए स्टेट बैंक ऑफ़ सौराष्ट्र के निदेशक मंडल में निदेशक के रूप में नियुक्त करती है।

[सं. एक 15/8/91-आई.आर.]

समपाल भाटिया, अव्वर सचिव

New Delhi, the 20th April, 1992

S.O. 1206.—In pursuance of clause (ca) of sub-section (1) of section 25 read with sub-section (2A) of section 26 of the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), the Central Government hereby appoints Shri H. P. Trivedi, Head Cashier, State Bank of Saurashtra, Industrial Finance Branch, Ahmedabad as a director on the Board of the State Bank of Saurashtra from among the employees of the State Bank of Saurashtra who are workmen for a period of three years commencing on 20th April, 1992 and ending with 19th April, 1995 in the place of Shri R. V. Bhatt appointed under the Notification of the Government of India, Ministry of Finance, Department of Economic Affairs (Banking Division) No. F. 15/4/87-IR dated 1st June, 1988.

[No. F. 15/8/91-IR]

S. P. BHATIA, Under Secy.

केन्द्रीय उत्पाद-शुल्क समारोहनालय

अधिसूचना सं. 51/1992

दृन्दीर, 18 मार्च, 1992

का.घा. 1207.—श्री एम.के. शेकटकर, अधीक्षक, समूह "ख" केन्द्रीय उत्पाद-शुल्क समारोहनालय इन्दौर, निवर्तन आयु प्राप्त करने पर दिनांक 9-2-92 को अपराह्न में शामकीय सेवा में निवृत्त हुए।

[प. सं. 11(3) ९-गोप/89]

बासकृष्ण अग्रवाल, समारोहना

CENTRAL EXCISE COLLECTORATE

NOTIFICATION NO. 51/1992

Indore, the 18th March, 1992

S.O. 1207.—Shri M. K. Shekatkar, Superintendent, Central Excise, Group 'B' of Indore Collectorate having attained the age of Superannuation, retired from Government Service on 29-02-92 (A.N.).

[C. No. II(3)8-Con/89]

B. K. AGARWAL, Collector

वाणिज्य मंत्रालय

नई दिल्ली, 21 अप्रैल, 1992

का.घा. 1208.—केन्द्रीय सरकार, निर्यात (स्वायिटी नियंत्रण और निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मैसर्स मोटर इन्डस्ट्रीज कं. लिमिटेड, 75, एम आई डी सी, सतपुर मासिक में विनिर्मित डीजल इंजनों के लिए नोजल, नोजल होल्डर तथा पुर्जों और इन्जेक्टर समंजन का निर्यात से पूर्व निरीक्षण करने के लिए मैसर्स मोटर इन्डस्ट्रीज कम्पनी लिमिटेड, को जिनका रजिस्ट्रीकृत कार्यालय होसूर रोड, अदुगोदी, बैंगलूर-560 030 में है 18 मार्च, 1992 से तीन और वर्ष की अवधि के लिए का.घा. 528 तारीख 18 मार्च, 1989 के अनुसार अधिसूचित शर्तों के अधीन रहते हुए, अभिकरण के रूप में मान्यता देती है।

[फाइल सं. 5/3/88-ईआई एण्ड ई पी]

सुमा सुब्बान्णा, निदेशक

MINISTRY OF COMMERCE

New Delhi, the 21st April, 1992

S.O. 1208.—In exercise of the powers conferred by sub-section (1) of Section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), the Central Government hereby recognises, for a further period of three years with effect from 18th March, 1992, M/s. Motor Industries Co. Ltd., having their registered office at Hosur Road, Adugodi, Bangalore-560030 as the agency for inspection of Nozzles, Nozzle Holders and Spares and Injector Assembly as spares for Diesel Engines manufactured at M/s. Motor Industries Co. Ltd., 75, MIDC Satpur, Nashik prior to export, subject to the conditions notified vide S.O. 528 dated 18th March, 1989.

[F. No. 5/3/88-EI&EP]

SUMA SUBBANNA, Director

मानव संसाधन विकास मंत्रालय

(महिला एवं बाल विकास विभाग)

नई दिल्ली, 7 अप्रैल, 1992

पूर्व विन्यास अधिनियम, 1890 (1890 का 6) के मामले में

राष्ट्रीय बाल कोष, नई दिल्ली के मामले में

का.घा. 1209.—राष्ट्रीय बाल कोष, नई दिल्ली के प्रबन्ध बोर्ड द्वारा किए गए अधिवेशन पर और उनकी सहमति से पूर्व विन्यास अधिनियम 1890 (1890 का 6) के खण्ड 10(2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्वारा आदेश देती है कि रु. 1.58, 046 (एक लाख अठावन हजार छयालीस मात्र) की राशि जिसकी अवधि 24-3-92 को पूरी हो गई है सिविकेट बैंक, होज खाम, नई दिल्ली में 62 दिनों के लिए फिक्स डिपॉजिट योजना के अन्तर्गत 11 प्रतिशत की ब्याज दर से 24-3-92 से पुनः निवेश की गई।

2. भारत सरकार के तत्कालीन समाज कल्याण विभाग के दिनांक मई 1979 के समय-समय पर यथा संशोधित सं.घा. 120(ई)

की अधिसूचना के साथ प्रकाशित राष्ट्रीय बाल कोष, नई दिल्ली के संचालन की योजना के अनुसार प्रयोग किए जाने हेतु उपरोक्त खाता भारतीय वृत्त वित्वास के खजाने के नाम होगा।

[सं. 13-1/92-टी.आर.-II]

प्रेम सागर, अवर सचिव

MINISTRY OF HUMAN RESOURCE DEVELOPMENT

(Department of Women & Child Development)

New Delhi, the 7th April, 1992

IN THE MATTER OF THE CHARITABLE ENDOWMENTS ACT, 1890 (6 of 1890)

IN THE MATTER OF THE NATIONAL CHILDREN'S FUND, NEW DELHI

S.O. 1209.—On the application made by and with the concurrence of the Board of Management of the National Children's Fund, New Delhi, as in exercise of the powers conferred by Section 10(2) of the Charitable Endowments Act, 1890 (6 of 1890), the Central Government do hereby order that the sum of Rs. 1,58,046 (Rupees One Lakh Fifty-eight Thousand Fortysix only) matured on 24-03-92 be re-invested in Fixed Deposit Scheme in Syndicate Bank, Hauz Khas, New Delhi for 62 days w.e.f. 24-03-92 at the rate of interest of 11 per cent per annum.

2. The above account shall vest in the treasure of charitable endowments of India to be held by him for being applied in accordance with the scheme for the administration of the National Children's Fund, New Delhi, published with the Notification of the Government of India in the then Department of Social Welfare No. S.O. 120(E) dated the 2nd March, 1979 as amended from time to time.

[F. No. 13-4/92-TR-III]

PREM SAGAR, Under Secy.

स्वास्थ्य और परिवार कल्याण मंत्रालय

नई दिल्ली, 23 अप्रैल, 1992

का. प्रा. 1210.—केन्द्रीय सरकार, होम्योपैथी केन्द्रीय परिषद् अधिनियम, 1973 (1973 का 59) की धारा 13 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करने हुए, केन्द्रीय होम्योपैथी परिषद् से परामर्श करने के पश्चात् उक्त अधिनियम की द्वितीय अनुसूची में निम्नलिखित संशोधन करती है, अर्थात्:—

“कर्नाटक शीर्षक के नीचे मद 7B और उससे संबंधित प्रविष्टियों के पश्चात् निम्नलिखित पद और प्रविष्टियाँ अन्तःस्थापित की जाएगी, अर्थात्:—

विश्वविद्यालय बोर्ड या चिकित्सीय संस्थान का नाम	मान्यता-प्राप्त चिकित्सीय अर्हता	रजिस्ट्रीकरण के लिए संशोधन	टिप्पणियाँ
“7B संगमौर विश्वविद्यालय	बैचलर ऑफ होम्योपैथिक मेडिसिन एंड सर्जरी	बी.एच.एम.एस. 1991 से 1995 तक”	

[सं. बी 27021/58/89-होम्यो.]

आर. के. मुखी, निदेशक

पाठ टिप्पण: मुख्य अधिसूचना भारत के राजपत्र भाग II, खण्ड 1 में का. प्रा. 76 दिनांक 20 दिसम्बर, 1973 के द्वारा अधिसूचित किया गया था।

MINISTRY OF HEALTH AND FAMILY WELFARE

New Delhi, the 23rd April, 1992

S.O. 1210. —In exercise of the powers conferred by sub-section (2) of section 13 of the Homoeopath Central Council Act, 1973 (59 of 1973), the Central Government, after consulting the Central Council of Homoeopathy, hereby makes the following amendment in the Second Schedule of the said Act, namely:—

In the Second Schedule, under the head “KARNATAKA” after Serial Number 7B and entries relating thereto, the following entry shall be inserted, namely:—

Name of the University, Board or Medical Institution	Recognised Medical Qualification	Abbreviation for registration	Remarks
“7C. Mangalore University	Bachelor of Homoeopathic Medicine & Surgery	B.H.M.S.	From 1991 to 1995”

[No. V. 27021/58/89-Homoeo]

R.K. MUKHI, Director

Foot Note : —The Principal Notification was notified in the Gazette of India Part 2, Section 1, vide S.O. No. 76, dated the 20th December, 1973.

दिल्ली विकास प्राधिकरण

नागर विमानन और पर्यटन मंत्रालय

सार्वजनिक सूचना

नई दिल्ली, 24 अप्रैल, 1992

नई दिल्ली, 23 अप्रैल, 1992

क्र. आ. 1211—केन्द्रीय सरकार का दिल्ली की सड़क योजना/क्षेत्रीय विकास योजना में निम्नलिखित संशोधन करने का प्रस्ताव है, जिसे जनता की जानकारी के लिए एतद्वारा प्रकाशित किया जाता है। प्रस्तावित संशोधन के संबंध में यदि किसी व्यक्ति को कोई आपत्ति हो अथवा सुझाव देना हो तो वह अपनी आपत्ति अथवा सुझाव लिखित रूप में इस सूचना के जारी होने की तारीख से तीस दिनों की अवधि के अंदर सचिव, दिल्ली विकास प्राधिकरण, विकास भवन, "बी" ब्लॉक, आई. एन. ए., नई दिल्ली को भेज दे। आपत्ति करने अथवा सुझाव देने वाले व्यक्ति अपना नाम और पता भी दे।

संशोधन—

“8.1 हवटेयर (20 एकड़) क्षेत्र में से लगभग 3.7 हेक्टेयर (8.87 एकड़) क्षेत्र, जो उत्तर में विद्यमान दिल्ली नगर निगम शारीरिक केंद्र, दक्षिण में पूठखुर्द गांव, पश्चिम में दिल्ली बवाना रोड और पूर्व में गंगा टोली रैस्ट हाउस से घिरा हुआ है, का भूमि उपयोग “ग्रामीण उपयोग” से “सार्वजनिक एवं अर्द्धसार्वजनिक सुविधाओं” (100 बिस्तर के अस्पताल) में परिवर्तित किया जाना प्रस्तावित है।”

2. प्रस्तावित संशोधन को वसति वाला नक्शा निरीक्षण के लिए उक्त अवधि के अंदर सभी कार्यदिवसों में उप-निदेशक (मुख्य योजना), विकास मीनार, छठी मंजिल, आई. पी. एस्टेट, नई दिल्ली के कार्यालय में उपलब्ध होगा।

[संख्या एफ. 20(12)/85-एम. पी.]

रणबीर सिंह, सचिव

DELHI DEVELOPMENT AUTHORITY

PUBLIC NOTICE

New Delhi, the 23rd April, 1992

S.O. 1211.—The following modification which the Central Government proposes to make to the Master Plan/Zonal Development Plan for Delhi, is hereby published for public information. Any person having any objection or suggestion with respect to the proposed modification may send the objection or suggestion in writing to the Secretary, Delhi Development Authority, 'B' Block, Vikas Sadan, INA, New Delhi within a period of thirty days from the date of issue of this notice. The person making the objection or suggestion should also give his name and address.

MODIFICATION:

“The land use of an area measuring about 3.7 hac. (8.87 acres) out of 8.1 hac. (20 acres) and bounded by existing MCD physical centre in the North, Poothkhurd village in the South, Delhi-Bawana Road in the West and Ganga Toli Rest House in the East, is proposed to be changed from 'rural use' to 'public and semi-public facilities' (100 bedded hospital)”.

2. The plan indicating the proposed modification will be available for inspection at the office of the Deputy Director, Master Plan Section, Vikas Minar 6th floor, I.P. Estate, New Delhi on all working days within the period referred to above.

[No. F. 20(12)/85 MP]

RANBIR SINGH, Secy.

क्र. आ. 1212—सरकारी स्थान (अप्रतिष्ठित अधिभोगियों की देखभाल) अधिनियम 1971 की धारा 3 द्वारा पदन शक्तियों का उपयोग करने हुए, केन्द्रीय सरकार एतद्वारा निम्नलिखित शक्तियों के कालम 1 में उल्लिखित अधिकारों का उक्त अधिनियम के प्रवर्तन के लिए भारत सरकार के राजपत्रित अधिकारी के समकक्ष अधिकारी के रूप में संपदा अधिकारी नियुक्त करती है, जो वायदूत लिमिटेड के सरकारी परिसरों, जो निम्नलिखित शक्तियों के कालम 3 में निर्दिष्ट किए गए हैं, के संबंध में कालम 2 में उल्लिखित संबंधित क्षेत्राधिकार को संस्थाओं के अंतर्गत उक्त अधिनियम के द्वारा या उसके अधीन उक्त संपदा अधिकारी को सौंपी गई शक्तियों का प्रयोग करेगा और उसे प्रदत्त कर्तव्यों का निष्पादन करेगा।

तालिका

अधिनियम की संपदा अधिकारी सरकारी परिसरों की श्रेणियां धारा 3 के अंतर्गत के क्षेत्राधिकार की शक्तियों नियुक्त संपदा प्रादेशिक सीमाएं अधिकारी

उप प्रबंधक (निगमित प्रणाली एवं विधि कार्य)	संपूर्ण भारत में सभी परिसर	नितक शासक निमित्तेड पट्टाधिकारी है, किराएदार है या नगदसंधारी है और वे सभी परिसर जिन्हें वायदूत के लिए या उसके ओर से अधिग्रहीत किया गया है।
--	----------------------------	--

[गण्य ए.पी. 18030/1/92-ए. सी. (वी. एल.)]

एम. भट्टाचार्य, अवर सचिव।

MINISTRY OF CIVIL AVIATION AND TOURISM

New Delhi, the 24th April, 1992

S.O. 1212.—In exercise of the powers conferred by section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971, the Central Government hereby appoints the officer mentioned in Column 1 of the table below, being an officer equivalent to the Gazetted Officer of the Government of India, to be estate officer for the purpose of the said Act, who shall exercise the power conferred and perform the duties imposed on the said estate officer by or under the Act within the limits of the respective jurisdiction mentioned in Column 2 in respect of the public premises belonging to Vayudoot Limited and specified in Column 3 of the said Table.

TABLE

Estate Officer appointed under section 3 of the Act	Territorial limits of jurisdiction of the estate officers	Categories of the public premises
Dy. Manager (Corporate Systems & Legal)	All over India	All premises of which Vayudoot Ltd. is the owner lessee, tenant or licensee and all premises which are requisitioned for and on behalf of Vayudoot Ltd.

[F.No.AV.18030/1/92-ACVL]

M. BHATTACHARJEE, Under Secy.

श्रम मंत्रालय

नई दिल्ली, 13 अप्रैल, 1992

का. आ. 1213—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसर्ग में, केन्द्रीय सरकार, श्री एसोसिएटेड सीमेंट कम्पनीज लि., चन्दा सीमेंट वर्क्स, सिन्दोला लाईम स्टोन माईन्स सिन्दोला जि. यावतमाल के प्रबन्धनन्त्र के संबन्ध नियोजकों और उनके कर्मचारियों के बीच, अनुसर्ग में निविष्ट औद्योगिक विवाद में आरबोडरेटर, श्री एम. एन. चन्दूरकर के वचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-4-92 को प्राप्त हुआ था।

[संख्या एल-29013/2/90-आई. आर. (विवाद)]

बी. एम. डेविड, डेस्क अधिकारी

MINISTRY OF LABOUR

New Delhi, the 13th April, 1992

S.O.1213.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Arbitrator, Sh. M. N. Chandurkar, as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Associated Cement Companies Ltd., Chanda Cement Works, Sindola Lime Stone Mines, Sindola Taq. Wani Dist. Yavatmal and their workmen, which was received by the Central Government on the 8-4-92.

[No. L-29013/2/90-IR(Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE HON'BLE ARBITRATOR, SHRI M. N. CHANDURKAR, (CHIEF JUSTICE (Retd.) BOMBAY & MADRAS HIGH COURTS)

(In the matter of arbitration under Section 10-A of the Industrial Disputes Act, 1947 regarding dismissals of 5 workmen, pursuant to arbitration agreement between The Associated Cement Companies Ltd., Chanda Cement Works, Sindola Lime Stone Mine and Vidharbha Stone Mine Workers' Union, Sindola).

BETWEEN :

Vidharbha Stone Mine Workers' Union, Sindola Lime Stone Mine, Sindola, Taq. Wani, District Yavatma, ..Party No. 1.

AND

The Associated Cement Companies Ltd., Chanda Cement Works, Sindola Lime Stone Mine, Sindola, Taq. Wani, District Yavatmal, ..Party No. 2.

Mr. M. S. Nandanwar, Advocate—for Party No. 1.

Mr. Manok Gagrati, Sr. Advocate, and Mr. S. F. Parakh, Advocate—for Party No. 2.

BEFORE THE HON'BLE ARBITRATOR, SHRI M. N. CHANDURKAR, (CHIEF JUSTICE (Retd.), BOMBAY & MADRAS HIGH COURTS)

(In the matter of arbitration under Section 10-A of the Industrial Disputes Act, 1947 regarding dismissals of 5 workmen, pursuant to arbitration agreement between The Associated Cement Companies Ltd., Chanda Cement Works, Sindola Lime Stone Mine and Vidharbha Stone Mine Workers' Union, Sindola).

BETWEEN :

Vidharbha Stone Mine Workers' Union, Sindola Lime Stone Mine, Sindola, Taq. Wani, District Yavatmal, ..Party No. 1.

AND

The Associated Cement Companies Ltd., Chanda Cement Works Sindola Lime Stone Mine, Sindola, Taq. Wani, District Yavatmal, ..Party No. 2.

AWARD

In accordance with the Memorandum of Settlement under Section 12(3) of the Industrial Disputes Act, 1947 of M/s. SCC Ltd., Sindola Lime Stone Mines of Chanda Cements, Kolar, Chandrapur, and the workmen represented by the Vidharbha Stone Mine Workers Union, Sindola, District Yavatmal, the dispute which has been referred to me under Section 10-A of the Industrial Disputes Act, 1947 is the following :—

Whether the dismissal of 5 workmen, namely Shri L. Z. Khade, T. No. 917 (QHEO), Shri P. D. Bhongale, T. No. 922 (QHEC), Shri P. L. Nilmile, T. No. 940 (QHEO), Shri Y. B. Raut, T. No. 1123, Blaster, and Shri S. K. Giri, T. No. 1098, Mazdoor of Messrs ACC Ltd., Sindola Lime Stone Mines, with effect from 19-9-1990 is proper and justified. If not, to what relief they are entitled ?

This dispute arises out of an order of dismissal dated September 19, 1990 passed by the Owner Sindola Lime Stone Mines for the Associated Cement Companies Ltd. The order of dismissal dated 14th of September 1990 states that the Owner has gone through the record of the inquiry proceedings and he agrees and concurs with the findings of the inquiry officer dated 29-8-1990. It is further stated that he has gone through the past record of all the charge-sheeted workmen which is annexed to the order and that taking into account the gravity of the misconduct committed by each of the charge-sheeted employees, the 5 workmen, should be dismissed from the services of the Company since "they have taken active, leading and vital role in this matter of assault etc. on the Company's officers and, therefore, their gravity of misconduct is much more than the other 7 workmen". By the same order, 7 other workmen against whom also similar charges were framed were suspended by way of punishment for 4 days and a final warning was given "since they committed the misconduct of assault as a result of instigation etc. by other 5 workmen."

At the time when this order was passed, the proceedings relating to the conduct of one Suratsing were pending before me and the application for approval under Section 33(2)(b) of the Industrial Disputes Act was directed to be made and was in fact made.

The charge-sheet given to each of the 12 employees referred to an assault during day time on 6th April 1990 on one Vivek Sing, Senior Engineer-Plant and Narahari, Trainee Engineer, who along with two other officers, namely Shri B. R. Nagpure, Officer (Mines) and Shri S. K. Gupta, Officer (Mines), of the Company when these officers were patrolling the rope-way between the factory and the Sindola Mines for its safety in the Company's trucks. The charge-sheet alleged that the charge-sheeted employees had gone on an illegal and unjustified strike from the midnight of 23rd of March 1990 and continued to be on strike when the charge-sheet was given on 8th of April 1990. The material allegation was that Narahari and Nagpure were in the truck bearing Registered No. MH-34/A-83 and Viveksing and S. K. Gupta were in the Company's truck bearing Registered No. MTG 6214. It was alleged that at about 12 noon when these officers reached the approach-road parallel to the rope-way line, about 350 metres away from the rope-way loading station, the charge-sheeted employees forcibly stopped the truck in which Viveksing and Narahari were and compelled them under threat to get down from the truck. It was alleged that as soon as Viveksing and Narahari got down from the trucks, all the 12 employees started mercilessly beating both of them with hands and chappals, stone and helmets. As a result of this assault, Viveksing was alleged to have received severe injuries all over his body and particularly on his head, face, back and left ear and left eye. His left ear drum was damaged resulting in impairment to hearing from his left ear. Narahari was also alleged to have received severe injuries on

his nose, head face and back resulting in a fracture of his nose. The misconducts alleged to have been committed fell, according to the charge sheet, under Clauses 19(iv)(a) and (c), 19(x), 19(xxi) and 19(xiii) of the Standing Order.

The charge-sheet served was a charge-sheet-cum-notice and the workmen were asked to submit their written explanation within 72 hours from the receipt of the chargesheet-cum-notice. They were intimated that a joint inquiry into the charges levelled against each of them will be held on 14-4-1990 at 10 a.m. in the office of Manager, Mining, by Mr. B. N. Wadhvani, Senior Manager, Personnel of the charges levelled against each of them will be held on inquiry you will be given full opportunity to produce witnesses to defend yourself and also you will be given full opportunity to cross-examine the witnesses produce in support of the charges. You will also be given full opportunity to file any documents in your defence". The workmen were intimated that if they fail to attend the inquiry on the scheduled date and time or being present at the inquiry refused to participate in the inquiry, the inquiry will proceed. The inquiry was, however, finally conducted by Mr. T. K. Ghosh, who was Manager, Personnel Administration, at Jamul Cement Works.

Though all the workmen denied the charges against them, according to the Management, they did not participate in the inquiry though they were informed of the dates on which the inquiry would be held. The inquiry officer examined the following witnesses :—

- (1) Shri Ashok Kumar, Superintending Engineer Mines,
- (2) Shri B. R. Nagpure,
- (3) Shri S. K. Gupta, Officer, Mines,
- (4) Dr. V. M. Karlekar, Manager, Health Services,
- (5) Shri Viveksing, and
- (6) Shri Narahari, Trainee Engineer.

The inquiry having proceeded ex parte, the inquiry officer, on a consideration of the evidence, recorded the following findings :—

- (1) The strike of the workmen which commenced from the midnight of 23-3-1990 was illegal and all the charge-sheeted workmen had gone on an illegal strike from 23-3-1990.
- (2) Mr. Viveksing was beaten by Mr. P. D. Bhongale, Mr. S. K. Giri, Mr. P. L. Milmlie, Mr. S. K. V-shwakarma, Mr. M. N. Vandhre, Mr. A. B. Bobade and Mr. M. A. Bhuto,
- (3) Mr. Narahari was beaten by Mr. Y. B. Raut, Mr. L. Z. Khade, Mr. James Anandrao, Mr. R. N. Khade and Mr. J. S. Satpute.
- (4) Mr. Y. B. Raut, Mr. N. Z. Khade, Mr. S. K. Giri, Mr. P. L. Milmlie and Mr. P. D. Bhongale were leading the crowd and instigating the crowd to beat Mr. Narahari and Mr. Viveksing and these workmen have played a vital role in the whole incident and, therefore, their gravity of misconduct is much more than the other 7 workmen.
- (5) None of the charge-sheeted workmen have taken any plea of animosity and there was, therefore, no reason to disbelieve the statements of the witnesses in support of the charges.

Having arrived at these findings, the inquiry officer held that the charges set out in the charge-sheet issued to the workmen stood proved and they were accordingly guilty.

On the basis of this report, the Owner Sindola Stone Lime Mines passed an order of dismissal of 5 employees, namely M/s. N. Z. Khade, Y. B. Raut, P. B. Bhongale, P. L. Milmlie and S. K. Giri since they had taken the leading and vital role in the matter of assault of the company's officers and their gravity of misconduct was much more than the other 7 workmen. This order was made on 14th September 1990 and it was observed that he had

gone through the record of the inquiry proceedings and had gone through the past record of the charge-sheeted employees. The past record was annexed to the order of the Owner. So far as the other 7 workmen were concerned, he awarded punishment of suspension by way of punishment for 4 days and a final warning since they had committed the misconduct of assault as a result of instigation of other 5 workmen.

In his order he also pointed out that an application for approval under Section 33(2)(h) of the Industrial Disputes Act be made and one month's wages be paid to the aforesaid 5 workmen.

The dispute which necessitated the making of an application under Section 33(2)(h) related to a demand for taking disciplinary action against one Suratsing for his alleged misbehaviour and misconduct on 27-1-1990. This reference was in pursuance of an agreement published by the Central Government in the Gazette of India dated 11th of August 1990 and the matter in dispute, as agreed, was set out as follows :—

Whether the demand of General Secretary, Sindola Stone Mine Workers' Union, Sindola Mines, Yaotmal District, asking the management of ACC Ltd. for holding inquiry and grant suitable punishment to Shri Suratsingh, Havaldar, for the alleged misbehaviour with the wife of Shri Prithwisng Chopta, Watchman, on 27-1-1990 was proper valid and legal? If so, then what action is to be taken in the matter?

In the meantime, an application for approval under Section 33(2)(b) of the Industrial Disputes Act, 1947 of the dismissal of the 5 workmen was made by the employer. During the pendency of the reference with regard to the demand for action against Suratsing Havaldar, the said Suratsing was transferred from Sindola Stone Mines to Chanda Cements Works. Both the parties, therefore, gave a signed submission that in view of the transfer of Suratsing Havaldar, "no dispute as per the terms of reference dated 16-4-1990 is prevailing now and it is therefore most humbly and respectfully submitted that no dispute award may please be passed".

On the basis of this application, a No Dispute Award was dictated and passed in the presence of the parties on 15-12-1990 and the proceedings were declared to have terminated. This Award was forwarded to the Secretary, Government of India, Ministry of Labour Employment and Rehabilitation Department, New Delhi, by registered post on 24-12-1990.

So far as the application under Section 33(2)(b) was concerned when the matter was taken up on 17-1-1990, these applications were held to have been concluded by virtue of the substantive reference made with regard to the legality of the dismissal of the 5 workmen following the decision of the Karnataka High Court in ITC Ltd. v. Government of Karnataka, (1985) 2 LJI, page 430.

It was the contention of the workmen that since the conciliation proceeding were already pending before the Conciliation Officer, the employer should have taken prior approval under Section 33(1)(b) of the Industrial Disputes Act. On behalf of the employer, my attention was invited to the Minutes of the meeting between the employer's representative and the office-bearers of the Union in which a statement is made that the Union has agreed to withdraw the application dated 18th May 1990 made before the Assistant Labour Commissioner. In my order dated 17-10-1990 I had left open the question as to whether the dismissal order is bad for non-compliance with Section 33(1)(b) of the Act which could be properly raised in the reference with regard to the merits of the dismissal order. The applications under Section 33(2)(b) of the Act thus came to be disposed of.

In this reference, the Union has submitted its statement of claim signed by the General Secretary and President of the Union. The ground on which the order of dismissal is

sought to be challenged as set out in the Statement of Claim and which have been argued in extenso on the basis of written submissions are under the following heads :—

- (1) Non-survival of dismissal orders of workers.
- (2) Dismissal orders being illegal for want of permission under Section 33(1)(b) of the Industrial Disputes Act.
- (3) Non-maintainability of application under Section 33(2)(b) of the Industrial Disputes Act.
- (4) Dismissal orders are without authority.
- (5) Dismissal orders are vindictive and discriminatory and out of a large number of workers only 5 workers have been selected and discriminated against vindictively.
- (6) The allegations of illegal and unjustified strike from 23-3-1990 to 10-4-1990 was untenable.
- (7) The disciplinary proceedings were vindictive and revengeful and a biased inquiry officer was deliberately appointed.
- (8) The inquiry officer proceeded to make an ex-parte inquiry by fabricating documents.
- (9) The inquiry proceedings were in gross violation of the provisions of Rule 17(iii), Schedule I-A of the Industrial Employment (Standing Orders) Central Rules, 1946.
- (10) The inquiry was in violation of the principles of natural justice.
- (11) The dismissal orders are passed with ulterior motive of reducing the man-power at the Sindola Mines as the mine was on the verge of being exhausted.

The details of these pleas will be referred to while dealing with the several contentions raised on behalf of the Union as the arguments are also advanced in the same order in which the allegations are made in the Statement of Claim.

All these allegations have been denied by the Company in their written statement. According to the Company, the workmen at the Sindola Mines had gone on an unjustified strike from the midnight of 22nd March, 1990 and the company had obtained an ad interim injunction from the Joint Civil Judge, Junior Division, Wani, on 30-3-1990 restraining the workmen and the Union from causing any damage to the company's property and, inter alia, from obstructing ingress and egress of men and material to and from Sindola Limestone Mines. The Company has referred to the assault on the two officers on 6-4-1990 and pointed out that the strike was called off only on the intervention of the Collector and District Magistrate, Yavatmal, Superintendent of Police, and other Senior Officers of the District.

With regard to the inquiry, the Company has stated that initially Senior Manager, Personnel, Mr. B. N. Wadhvani was appointed to conduct a joint inquiry into the charges levelled against the workmen, but due to pressing engagements Mr. Wadhvani was unable to conduct the inquiry and, therefore, Mr. T. K. Bose, Manager, Personnel and Administration, was appointed as the Inquiry Officer and this decision was conveyed to each of the 12 workmen by letter dated 23-4-1990. They were also informed that the inquiry would be held on

28-4-1990 at 9-30 a.m. in the office of the Manager, Mining. According to the company, nobody appeared on 28-4-1990 at the inquiry which was adjourned to 4-5-1990 with a view to offer the workmen another opportunity to meet the charges levelled against them. The fact of adjournment was again conveyed to all the charge-sheeted workers. On 4th May, 1990 also nobody appeared from the side of the workmen and the inquiry was adjourned to 17-5-1990. Notice of this date was also given to the concerned workmen. However, as none appeared on 17-5-1990, the inquiry was proceeded with ex-parte. Evidence was recorded by the Inquiry Officer and the inquiry was completed.

With regard to the application under Section 33(2)(b) of the Industrial Disputes Act, it is stated that the application was filed by way of abundant caution. According to the Company, the action of dismissal is legal, proper and justified and in the event of the arbitrator holding that the inquiry is vitiated for any reason whatsoever the company sought permission to lead evidence before the Arbitrator to prove the misconduct.

It is pointed out that after the dismissal of the 5 workmen, a notice of strike dated 21-9-1990 was given that the workmen would resort to an indefinite strike from 8-10-1990 unless the 5 dismissed workmen were reinstated with back wages. This demand became the subject matter of the conciliation proceedings but the workmen went on strike with effect from 11-10-1990 and it was in these conciliation proceedings that it was agreed that the matter regarding the dismissal of the 5 concerned workmen would be referred to arbitration. It is stated that in these conciliation proceedings a complaint was made on 4-10-1990 before the Assistant Labour Commissioner (C), Chandrapur, alleging that the management had committed a breach of Sections 33(1)(a) and 33(1)(b) by dismissing the 5 concerned workmen but after discussion this complaint was agreed to be withdrawn and was withdrawn.

With regard to the pleas taken in the Statement of Claim by the Union, it is stated that the contention that the dismissal orders against the 5 workmen do not survive is not justified, that the provisions of Section 33(1)(b) of the Industrial Disputes Act were not applicable and that there is no violation of the said provisions. Further the Union having agreed to withdraw its complaint, it is estopped from contending that there was a breach of Section 33(1)(b), the contention raised by the Union that the approval application was not in existence as alleged is not justified, the grounds on which the dismissals are challenged as being without authority are not justified, the dismissal orders were not vindictive and were not vitiated on the ground of victimisation or discrimination, the case of the union that the allegation of illegal and unjustified strike was untenable is not correct, the allegations of bias against the Inquiry Officer were misconceived and baseless and are a clear afterthought and no grievance was made against Bose though the concerned workmen were informed, as far back as on 23-4-1990, about the appointment of Mr. Bose as Inquiry Officer in place of Mr. Wadhvani, the allegation of fabricating documents is denied.

The allegations made in support of the contention that the ex parte inquiry was illegal are denied by the Company. It is denied that the inquiry is conducted in violation of any of the Standing Orders or that the inquiry is null and void. The charge of violation of principles of natural justice is denied. The allegations made in paragraphs (a) and (b) of paragraph 11 of the Statement of Claim are denied as being false and it is stated that the Limestone Mines at present are such that the mine can be

used for manufacture of cement for at least 30 years more. The charge that Mr. Bose was appointed for holding a mock inquiry is denied. With regard to the allegation that the management has provoked the Union by dismissing the 5 workmen or that it intended to victimise them is denied.

In short, the case of the Company is that the dismissal of the 5 workmen concerned is legal, valid and proper and fully justified and the workmen are not entitled to any relief.

The Union has filed a long rejoinder to the written statement. Among other pleas taken in the rejoinder, the union has reiterated its plea that the dismissal orders are illegal on account of violation of Section 33(1)(b) of the Industrial Disputes Act. It has also reiterated the fact that non-survival of the application under section 33(2)(b) should be considered as meaning that there was no application under Section 33(2)(b). It is further stated that the Company has not proved the fact that the alleged incident has taken place on the premises of the Company as it is stated in the chargesheet that the incident has taken place 300 to 350 metres away from the ropeway "which incidentally is not the premises of the management". It is further stated that since the departmental inquiry itself is challenged by the Union, reliance of the management on the findings of the Inquiry Officer is unwarranted. The charge of discrimination is reiterated. A charge has been made against the Management that "armed police force was applied" after the agitation which commenced on 23-3-1990 and the management and the officers inflicted atrocities on the workers and that cessation of work has been caused by tactics adopted by the management. This allegation was, however, not attempted to be proved.

With regard to the bias of the Inquiry Officer, it is stated that the Union has from time to time raised a voice against the biased intention of the Inquiry Officer as he has already participated on behalf of the management in various negotiations held between the management and the Union. However, according to the Union, it has no record and was unable to produce any documentary evidence as the official record is available with the Management. Thus according to the Union, it does not find it necessary to produce more particulars. The charge of fabrication of documents is reiterated. With reference to the letters Exhibits C-1 and C-3 which are said to have been posted under Certificate of Posting to the Inquiry Officer, the case of the Union is that this was required to be done because Mr. Bose had refused to accept these letters deliberately. Along with the rejoinder, xerox copies of the two letters and xerox copies of the Certificate of Posting dated 28-4-1990 and 4-5-1990 were produced. In the rejoinder, the earlier statements made with regard to the illegality of the inquiry have been reiterated.

Along with the rejoinder, the Union had produced xerox copies of two letters dated 26-4-1990 and 4-5-1990 which are alleged to have been sent to the Inquiry Officer under Certificate of Posting and xerox copies of two Certificate of Posting were attached to the rejoinder. The original Certificate of Posting dated 28th of April 1990 and 4th of May 1990 respectively were also produced at the stage of evidence of Joshi on 21-6-1991, being Exhibits C-2 and C-4 and the carbon copies of the respective letters dated 28-4-1990 and 4-5-1990 were also produced. According to the Union, these letters were tendered to the Inquiry Officer Mr. Bose personally but he refused to accept them. In the letter dated 1020 GI/92—2

28-4-1990, a request is made to the Inquiry Officer that he should refrain from proceeding with the inquiry as the Union had taken up the matter before the Conciliation Officer and Assistant Labour Commissioner, Chandrapur, and that if the Inquiry Officer proceeded with the inquiry proper opportunity be granted to the delinquent workers according to law. The letter mentions the names of certain persons, including Joshi and Pardhi as co-workers of the delinquent workers, to defend their case. In the second letter alleged to have been sent on 4-5-1990, it is pointed out that all the delinquent employees with their co-workers were present on 28-4-1990 and that the Inquiry Officer had refused to entertain the mass of workers and yet in the letter by the Inquiry Officer, dated 28-4-1990 no reference has been made to this fact and therefore the Union felt that the delinquent employees will not get justice at the hands of the Inquiry Officer. Two further grounds which were raised by way of challenge to the inquiry were : (1) that the alleged incident has been place outside the premises of the management and (2) that a criminal prosecution, being Criminal case No. 47 of 1990, under Sections 147, 149, 324 and 337 of the Indian Penal Code has already been registered in respect of the same incident in the Court of the Judicial Magistrate, First Class, Wani, and no departmental inquiry should be conducted until the criminal case is finally decided. There is some dispute as to whether these letters have in fact been tendered to the Inquiry Officer and refused by him and also whether they were in fact posted because the case of the company is that these letters were neither tendered to the Inquiry Officer nor were they received by the Inquiry Officer.

Since primarily the burden to establish that the inquiry has been properly conducted by the management was on the management, evidence of witnesses for the management was recorded first. The management examined the following witnesses :—

- (1) Tapan Kumar Bose, the Inquiry Officer, and
- (2) Hasmukhlal Jain, who represented the management at the inquiry.

On behalf of the Union, Gandlal Joshi, General Secretary of the Union, was examined as its witness.

As it was the case of the management that there was no infirmity in the inquiry held, that the ex-parte inquiry was justified and the management would rely only on the evidence recorded by the Inquiry Officer in order to justify the validity of the dismissal of the five employees in question, arguments on behalf of the claimants and the respondents were heard extensively. The learned counsel for both sides had submitted written Notes of Arguments and the learned counsel for the Union has further submitted a brief reply in writing to the written Synopsis of Arguments advanced on behalf of the company. Both the counsel were heard finally on Friday the 10th January 1992.

Large number of decisions have been referred to in the Notes. Arguments submitted by both sides and xerox copies of the relevant citations have also been supplied by them.

I have carefully gone through the entire record of the inquiry proceedings, the original of which has been submitted by the company in a file consisting of 270 pages, I have also carefully considered the Notes of Arguments and the

decisions relied upon by the respective parties. However, I shall refer only to those decisions which are, in my opinion, relevant for disposal of this reference.

Since the learned counsel for the claimants has categorised his points in the Notes of Arguments, it would be advisable to deal with the arguments advanced by the learned counsel for the Union in the same order. Wherever necessary, I shall refer to the evidence of the witnesses examined by me and the statements of witnesses recorded by the Inquiry Officer.

Since it has been contended on behalf of the Union that no inquiry has at all been held, it is advisable at the outset to decide the question as to whether any inquiry was held by Bose and, if so, whether he was justified in proceeding with the inquiry ex-parte. In the statement of claim, initially a stand is taken in paragraph 8(iii) that on 17-5-1990 T. K. Bose has not conducted any inquiry and that from the documents it was seen that "by way of manipulation of documents in combination with the management and preparing fraudulent documents Shri T. K. Bose has tried to establish that the inquiry was conducted in absence of accused persons ex-parte and on the basis of the fraudulent documents the Inquiry Officer has held all the accused officials guilty to the charges levelled against them". Later in the same paragraph, however, a stand is taken that the Inquiry Officer has not taken any heed of the letters dated 28-4-1990 and 4-5-1990 and has conducted the inquiry with bias and mala fide motive against the workers ex-parte and the ex-parte inquiry conducted by Shri T. K. Bose is totally illegal and the said inquiry is illegal ab initio and the punishment of dismissal given on the basis of the illegal inquiry is liable to be quashed. According to the Union, on 28-4-1990, all the accused workers along with S/Shri Joshi, Bhagat, Pardhi, Parchake, G. K. Bhagat and Milmile were present as their co-workers in their departmental inquiry, but taking into consideration the huge mass of workers, Bose who was alone in the inquiry hall refused to entertain anybody and he refused to conduct the inquiry and he left the inquiry hall without making any inquiry or without specifying the next date of the oral inquiry. The fact that Bose issued a letter dated 28-4-1990 fixing the inquiry on 4-5-1990 is not disputed, but the plea taken is that the contents of this letter were wrong. With reference to 4-5-1990, the plea taken is that all the 12 charge-sheeted employees were present along with the persons referred to above as co-workers and that Bose told Joshi, the General Secretary, that due to the request of the Conciliation Officer and Assistant Labour Commissioner, Chandrapur, for maintaining status quo, vide his letter dated 2-5-1990, the inquiry could not be conducted further. Thus no further date was fixed. Bose issued a letter dated 12-5-1990 fixing the oral inquiry for 17-5-1990. The receipt of the letter dated 12-5-1990 by the concerned workmen is not disputed. Then, with reference to 17-5-1990 the stand taken is that all the 12 charge-sheeted employees were present with their co-workers, namely Joshi, Pardhi, Parchake, T. S. Bhagat and G. K. Bhagat, but on this day also the Inquiry Officer refused to conduct the inquiry in view of the Conciliation Officer's letter dated 2-5-1990 and in view of the letter of the Union dated 15-5-1990 addressed to the General Manager, ACC, Cement Nagar, Chandrapur. Thus according to the statement of claim, even on 17-5-1990, T. K. Bose has not conducted any inquiry. Then it is alleged that on 28-4-90 and 4-5-1990 the Union's Advocate was specially called at Sindola and under his guidelines the General Secretary of the Union addressed two letters to T. K. Bose, but he had refused to take those letters and from this refusal his mala fide motive "was properly understood by our Advocate" and according to his instructions both the letters had been sent under Certificate of Posting.

The Company in their written statement has denied all these allegations. It is stated that none of the two letters dated 2-5-1990 or 15-5-1990 contained any request not to proceed with the inquiry. The charge of documents having been fraudulently prepared is denied. It is stated that no letters dated 28-4-1990 or 4-5-90 has been received by the Company. It is also denied that Bose ever refused to receive any letters as alleged. It is alleged that at no stage prior to the filing of the statement of claim have any allegations been made with regard to the letters dated 28-4-1990 and 4-5-1990 and no such allegation has been made in the reply to the approval application.

Before I go to the evidence of Bose or Jain, since the reference has been made to the letter dated 2-5-1990, it is necessary to point out that this letter (Ex. C5) is addressed by the Assistant Labour Commissioner (C), Chandrapur, to the General Manager, ACC, Chanda Cement Works and Mines Manager, ACC, Sindola Limestone Mines, enclosing therewith a representation from the General Secretary, Vidharbha Stone Mine Workers' Union, Sindola, dt. 24-4-1990. It is stated in this letter that in this demand charter/representation the Union has raised number of issues which require the General Manager's and the Mine Manager's personal consideration and sympathetic approach. The letter refers to the grievance of the Union that the management is proposing to deduct 8 days' wages and that police cases were also pending for various offences and simultaneously the Management is conducting the inquiry. While comments of the Management were invited and a conciliation meeting was fixed on 18-5-1990, the letter further says that the Company "should maintain the status quo". So far as the letter dated 15-5-1990 is concerned, it is addressed by the Union to the General Manager and the Mines Manager giving reference to the letter of the Assistant Labour Commission dated 2-5-90 and the allegation made is that the Management is holding inquiry into the alleged misconduct of the workers of the mines and the Company should restrain from adopting unfair labour practices against the employees to maintain industrial peace failing which the Union will be constrained to chalk out collective action against the Management.

Now, firstly it is difficult to construe the letter dated 2-5-1990 as a direction to the Inquiry Officer or to the Company not to proceed with the inquiry. The letter dated 15-5-1990 does contain a grievance with regard to the holding of the inquiry, but it was not obligatory on the Management to withhold the inquiry as sought by this letter and going ahead with the inquiry only meant that the Management did not accept the request for not proceeding with the inquiry.

What is however more important to point out is that it is put into the mouth of Bose that he told Joshi that due to the request of the Conciliation Officer, the inquiry could not be conducted further. There are two charges which have been made against Bose. One is that having told Joshi that no inquiry would be conducted, he proceeded to issue a notice of inquiry fixing the date of inquiry as 17-5-1990 and secondly that Bose has manipulated the documents without making any inquiry whatsoever. The charge of fabrication of documents is a serious charge and it is surprising that when Bose was being cross-examined the fact that he had told Joshi on 4-5-1990 that he was not proceeding with the inquiry because of the alleged request of the Conciliation Officer to maintain status quo, vide his letter dated 2-5-1990, has not been even put to Bose. As a matter of fact, Bose has clearly stated that on 4-5-1990 he took on record certain documents but adjourned the proceedings to 17-5-1990. He has also stated that on 4-5-1990 neither Joshi nor Pardhi nor any of the charge-sheeted employees nor any other workers were present to defend the charge-sheeted employees. The further allegation made in the statement of claim that even on 17-5-1990 Bose, the Inquiry Officer, did not hold the inquiry in view of the letter dated 2-5-1990 and the Union's letter dated 15-5-1990 has not been put to Bose in cross-examination. If there was any conversation with Joshi on 4-5-1990 and 17-5-1990, one would have expected that conversation to be put to Bose when he was in the witness box. As a matter of fact, even Joshi in his examination-in-chief does not say that on 4-5-1990 Bose told him that he was not proceeding with the inquiry in view of the letter of the Assistant Labour Commissioner dated 2-5-1990. What happened on 4-5-1990, according to Joshi, was that he had given the letter dated 28-4-1990 (Ex. C-3) to Bose and he declined to accept the letter. This was at about 8.15 a.m. and Bose left at 11.30 a.m. but Joshi and other continued to wait. Therefore, the alleged conversation with regard to not holding the inquiry on 4-5-1990 is

not deposed to even in his examination-in-chief by Joshi. Same is the position with regard to the allegation that Bose refused to conduct the inquiry on 17-5-1990 in view of the letter dated 2-5-1990 and the Union's letter dated 15-5-1990. All that is said as to what happened on 17-5-1990 was that Bose came out of the office and "told us that he was not going to make the inquiry".

Now so far as the letters dated 28-4-1990 and 4-5-1990 are concerned, undoubtedly there are Certificates of Posting of those dates. It was argued on behalf of the Union that the letter dated 28-4-1990 was handed over to Bose who after reading the same returned it to Joshi with the assurance that he will not conduct the inquiry. The statement of claim, however, does not even refer to the fact that the letter dated 28-4-1990 was read by Bose and then returned it to Joshi. The statement says that Bose refused to accept the said letter. It is difficult to accept the evidence of Joshi that Bose had told him that since conciliation proceedings were pending and status quo order was there, he will not go on with the inquiry. Having seen the general demeanour of Bose in the witness box while he was giving evidence, he has impressed me as a witness of truth and having regard to the nature of the evidence and absence of questions put to him with regard to the alleged conversation on 28-4-1990 and 17-5-1990 with Joshi and the absence of any questions with regard to the alleged fabrication of the records of the inquiry, I am inclined to accept the evidence of Bose that he had conducted the inquiry duly and that the letters dated 28-4-1990 and 4-5-1990 were never given to him. It is true that there are Certificates of Posting of an envelope having been sent to Bose on 28-4-1990 and on 4-5-1990. Assuming that an envelope was sent as indicated in the Certificate of Posting, the presumption which might arise from, the fact that there are Certificate of Posting will, however, stand rebutted by the statement of Bose that he had never received these letters.

The contents of the letter dated 28-4-1990 even otherwise do not negative the fact, in the face of the positive statement of Bose, that no employees were present on 28-4-1990. The letter dated 28-4-1990 cannot establish the presence of the persons referred to therein. I would rather accept the oral statement of Bose that nobody was present at the inquiry on 28-4-1990 and 4-5-1990. The letter dated 4-5-1990, assuming that it was sent, is of no assistance because by that letter a threat was administered that the delinquent employees and their co-workers will be present on the due date but will not take part in the inquiry.

We are really concerned with what happened on 17-5-1990 and if the evidence of Bose is accepted that on 17-5-1990 neither the delinquent employees nor the representative of the Union appeared, it is difficult to hold that the Inquiry Officer was not justified in proceeding with the inquiry ex-parte.

What is however significant is that the inquiry was being made against individual employees. There is enough evidence in the inquiry papers to show that notices about the dates of inquiry were sent to the concerned employees. It is surprising that not one of these 5 persons who were really going to be affected by the result of the inquiry has cared to give evidence in these proceedings. The company's case is that none of the employees had ever appeared on any of the dates on which the inquiry was fixed. It is specifically stated in the notice issued on 12th of May 1990, which was also put on the Notice Board on 15-5-1990, that the concerned workmen had not appeared on 4-5-1990 and that the inquiry had been adjourned to 17-5-1990. The fact that these notices have been received does not seem to be in dispute because it is claimed that the employees did appear. If any of the employees had appeared on 28-4-1990, 4-5-1990 and 17-5-1990, nothing would have been more easy to disprove the claim of the management that no employee had appeared than the concerned workmen appearing as witnesses because ultimately it is they who are affected by the orders of dismissal. Reading the evidence of Bose and Jain and having gone through the proceedings of the inquiry, I find that the inquiry officer was more than justified in proceeding with the inquiry ex-parte as the concerned employees had failed to appear, in spite of notice, on the dates on which the

inquiry was notified. I am not inclined to accept the evidence of Joshi that Bose had not made any inquiry at all and that he told Joshi that he was not going to make the inquiry. There is, in my opinion, no infirmity in the course accepted by the Inquiry Officer having regard to the facts of the case.

I shall now proceed to deal with the arguments on merits in the sequence in which they have been made in the written note of arguments. As a matter of fact, the learned counsel for the Union read out in extenso his written note.

The first point raised by the learned counsel for the Union is that in view of the fact that by the agreement dated 29-10-1990, it is agreed between the parties that subsistence allowance should be paid to the five workmen pending the decision of this reference, the order of dismissal does not survive. The terms of settlement dated 29-10-1990 (Ex. C-6) according to which the matter regarding the dismissal of the five employees in question was referred to me under Section 10-A of the Industrial Disputes Act, 1947 contain a clause that "the management agree to pay the subsistence allowance at the rate equivalent to 50 per cent of wages last drawn to the 5 (five) dismissed employees during the pendency of the dispute before the Arbitrator and till the Award is received by the parties". It is enough to point out that though what is agreed to be paid during the pendency of this reference is described as subsistence allowance, that was not the subsistence allowance contemplated by Standing Order 20(5). It was really in the nature of an ex gratia payment and did not affect the fact that the reference was in fact made to determine the validity of the dismissal order. The payment contemplated by the settlement did not therefore affect the subject matter of the reference. The decisions relied upon by the Union in *Western India Match Company Limited v. Its Workmen*, (AIR 1973 SC 2650) and *Workmen of Delhi Cloth Mills Ltd. v. Management* (AIR 1970 SC 1851) are not of any assistance to the Union on the facts of the present case.

The second point raised by the Union is that the order of dismissal is illegal as no permission was obtained from the Conciliation Officer under Section 33(1)(b) of the Industrial Disputes Act, 1947 before making the order of dismissal. Undoubtedly, the provisions of Section 33(1)(b) provide that during the pendency of any conciliation before the Conciliation Officer in respect of an industrial dispute, no employer shall, for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the permission in writing of the authority before which the proceeding is pending.

Now, undoubtedly, there is a letter dated 24th April 1990 (Ex. C-7) addressed to the Assistant Labour Commissioner, Central at Chandrapur. A reference is made in this letter to the fact that the Union had submitted their Charter of Demands to the Company by the letter dated 16-4-1990, but the management is adamant and hence the demands are placed before the Assistant Labour Commissioner. If the three demands stated in this letter are carefully considered, it is difficult to consider items 1 and 2 as really something which can become the subject of an industrial dispute. Item 1 refers to the demand that "there will be no victimisation pertaining to the incidents of any member of this Union and this Union urge the management that no revengeful and vindictive attitude be maintained against any member of this Union". Item 2 reads: "This Union called upon the management that the Management is indulging in initiating and launching criminal proceedings against members of this Union in bad faith and producing false documents and evidence against the members of this Union. This Union therefore demands that no such action be taken by the Management". The question as to whether any particular disciplinary action taken by the management is revengeful and vindictive can be decided only after the action is taken. Similarly whether a criminal proceeding is taken in bad faith or not will depend on the outcome of such a criminal proceeding. The third demand undoubtedly refers to pay and allowances for the period of the strike i.e. 20-3-1990 to 10-4-1990. However, the misconduct with which the 5 workmen were charged is in connection with the assault on the two Officers of the Company and this misconduct cannot even be remotely con-

nected with anything that is said in the letter dated 24-4-1990. Consequently the contention raised on the basis of want of permission under Section 33(1)(b) is liable to be rejected.

The third contention raised on behalf of the Union is that since it has been held in these proceedings earlier that the application under Section 33(2)(b) of the Industrial Disputes Act, 1947 (hereinafter referred as the Act) did not survive, the proceeding under Section 33(2)(b) of the Act must be treated as having been withdrawn by the Management and no application under Section 33(2)(b) must be considered as having been presented. Therefore, according to the learned counsel, the dismissal of the 5 workers were totally illegal. By an order dated 17-11-1990, I had held, relying on the decision of the Karnataka High Court in *ITC Ltd. v. Government of Karnataka and others*, (1985) 2 LLJ page 430, that the application under Section 33(2)(b) of the Act stands concluded and did not survive because the merits of the dismissal order are now the subject-matter of full-fledged arbitration reference under Section 10-A of the Act. It is obvious that a substantive reference having been made regarding the validity of the order of dismissal, the question as to whether permission under Section 33(2)(b) of the Act should be granted or not became wholly academic. The Union has relied on the decision of the Gujarat High Court in *Gujarat State Fertiliser Company Ltd. v. State of Gujarat and others* (1989) 11 C.L.R. page 59. All that is said in this decision of the Gujarat High Court is that the provisions of the Industrial Disputes Act do not prohibit withdrawal of an approval application once it is made in pursuance of the proviso to Section 33(2)(b) of the Act and that if the employer withdraws the approval application and thereby terminates the proceedings, he will be contravening the provisions of Section 33 of the Act and action may be taken against him under Section 31(1) and/or proceedings may be initiated under Section 10 or Section 33-A of the Act. But it is also pointed out that failure to comply with the requirements of the provisions of Section 33(2)(b) of the Act will not render the employer's action qua the workman illegal or non est. Reference was made in the decision to the decision of the Supreme Court in *M/s. Punjab Beverages Pvt. Ltd. v. Suresh Chand* (AIR 1978 SC 995) in which the Supreme Court has categorically held that if an employer contravenes the provisions of Section 33 by not making an application for approval of its action under sub-section (2)(b), such contravention does not ipso facto render the order of dismissal or discharge void and inoperative. It is difficult to see how any reliance can be placed on the decision in the Gujarat State Fertiliser Company's case. The company has not withdrawn the application under Section 33(2)(b). When it was held that the said application did not survive because a substantive reference is made regarding the validity of the order of dismissal, it meant that the application had become infructuous and this cannot be considered as withdrawal by the company. The dismissal order cannot, therefore, be said to be illegal as argued by the learned counsel.

The next contention raised by the learned counsel in paragraph 4(A) of the written note of arguments is that the dismissal of the workers is without authority. The dismissal is said to be without authority on the ground that the alleged misconduct has not taken place on the premises of the management and therefore the charge framed under Clause 19(iv)(a) in the charge-sheet was totally unmaintainable. It is argued that there was no positive and casual connection between the act and subversion of discipline. Consequently, according to the learned counsel, the charges of misconduct under Clause 19(iv)(a) and (d) are not maintainable.

Now at the threshold it has to be mentioned that there is no charge of misconduct under Clause 19(iv)(d). Indeed there is no sub-clause (d) in Clause 19(iv) in the Standing Orders. The charges framed are under Clauses 19(iv)(a) and (c), Clause 19(xx), Clause 19(xxi) and Clause 19(xlii). No submissions are made with regard to charges under Clauses 19(xx) and 19(xxi). With regard to charge under Clause 19(xlii), it is argued that the said charge "is not within the authority of management. It is the function of the State only". Clause 19 of the Standing Orders, in so far as material, reads as follows:—

"Any of the following acts or omissions on the part of workmen shall amount to misconduct

(i).....

(i)

(iii)

(iv) commission of any act, subversive of discipline or good behaviour—

(a) on the Company's property or premises;

(b) in the course of duty;

(c) outside the Company's premises if it directly affects the discipline or administration of the Company or it is directly linked with the general relationship of employer and employee or has a direct connection with the contentment of the men at work or has a material bearing on the smooth and efficient working of the concern;...."

On a bare reading of sub-clause (iv) of Clause 19 it is clear that an act subversive of discipline or good behaviour is made a misconduct if it is committed on the Company's property or premises. An act committed outside the Company's premises is also a misconduct if it directly affected, inter alia, the discipline or administration of the Company and has a material bearing on the smooth and efficient working of the concern. Therefore, if it is proved that the act of assault has in fact taken place on the Company's property or premises and the 5 workmen were involved in the said act of assault, then it will become a misconduct because such act will be subversive of discipline or good behaviour. Similarly, if it is proved that the two officers of the company have been assaulted while they were on duty and were acting in performance of their duties even outside the Company's premises such an act of assault will become misconduct under sub-clause (c) of Clause 19(iv) because it directly affects the discipline or administration of the Company and, in any case, such assault has a bearing on the smooth and efficient working of the concern inasmuch as assaulting two officers of the company when they were patrolling the rope-way with a view to see that it is safe, will have a material bearing on the smooth and efficient working of the concern. There can be no dispute about the proposition laid down in the decision of the Bombay High Court in *Kolhapur Zilla Shetkari Winkari Sahakari Sot Girma Ltd. v. Ramchandra Shankar Shinde*, (1990) 2 C.L.R. (H. C. Bom.) 803, where it has been held, following the decision of the Supreme Court in *Mulchandani's case* (AIR 1975 SC 2125) that where acts of violence or assaults take place away from the premises of the Undertaking, something positive and more has to be established to show casual connection between the acts and subversive of discipline. In the earlier part in paragraph 11 of the judgment it was held that if acts of violence or assaults take place on the premises of the Undertaking and within the duty hours, there can be a presumption that such action must be regarded as subversive of discipline or contrary to the norms of good behaviour within the premises or precincts of the establishment. It must, however, be pointed out that in that case it was found as a fact the assault arose out of personal grievance.

The learned counsel is not right when he contends that the misconduct provided under Clause 19(xlii) is not a matter within the purview of the management. When sub-clause (xlii) refers to any conduct endangering the life or safety of others, it will obviously include a conduct by workmen in assaulting a person which would endanger the life or safety of the other employees who have been assaulted and attacked. In the instant case there is no evidence that the place where the assault is said to have taken place belongs to the Associated Cement Companies. But if the finding of the assault and the employees taking part therein is held to be proper the misconduct under clauses 19(iv)(c) and 19(xlii) will be clearly established.

The next submission in paragraph 4(B) of the written note of arguments is that since a criminal proceeding was already pending before the Judicial Magistrate, First Class, Wani, in Criminal Case No. 47 of 1990, the departmental inquiry proceedings should not have been proceeded with till the decision of the said criminal case. This contention is liable to be rejected in view of the clear decision of the Supreme Court in *Khushewar Dubey v. Bharat Cooking Coal Limited*,

(1988) 2 C.L.R. page 497. In this decision, the Supreme Court has pointed out that while there could be no legal bar for simultaneous proceedings being taken, yet there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of a criminal case and in the latter class of cases it would be open to the delinquent employee to seek such an order of stay or injunction from the Court. The Supreme Court also pointed out that it is neither possible nor advisable to evolve a hard and fast strait-jacket formula valid for all cases and of general application without regard to the particularities of the individual decision.

Apart from the fact that in the instant case no order of stay or injunction, as observed by the Supreme Court, was obtained from any Court, it appears to me that having regard to the nature of the charges it was in the interests of discipline and good administration of the business of the company that the disciplinary proceedings ought to be disposed of early. It is common knowledge that criminal proceedings take a long time for disposal. As a matter of fact, the said proceedings are still pending and it would not be fair even to the employees to keep them under suspension for an indefinitely long period awaiting the decision of the criminal case. As there is no legal bar to the disciplinary proceedings going on, it is not possible to hold that on that ground the orders of dismissal became null and void.

The next contention in paragraph 5 under the heading "Vindictive and discriminatory orders of dismissal of workers" is that in the charge-sheet no specific charge is made against the five dismissed workers that they have taken active, leading and vital role in the assault on the officers of the management. The argument is that there is a common charge against all the 12 workmen and therefore the dismissal of the 5 workmen on the ground that they have taken active, leading and vital role in the assault on the officers is liable to be revoked. It is alleged that these 5 workmen have been intentionally and deliberately discriminated against and have been victimised. The company has denied the charge of discrimination. According to the company, the charge-sheet clearly spells out the charge that the workmen indulged in an assault. It is quite permissible, according to the learned counsel for the company, that where certain particular workmen have taken leading part in the assault, a serious view of the conduct of such workmen can be taken and where penalty of dismissal is levied on such workmen they cannot be said to be discriminated against if lesser punishment is given to some other persons who had taken part in the assault. The order of punishment shows that the Owner has taken the view that the gravity of the misconduct of the 5 dismissed workmen, who has taken active, leading and vital role in the matter of assault, is much more than the other 7 workmen and it is on this ground, having regard to the gravity of the misconduct that the punishment of dismissal has been awarded. The evidence of the two victims, namely Narahari and Viveking, clearly justifies the conclusion arrived at by the Owner that the 5 workmen in question had taken a leading part in the assault made on them and it was, in my opinion, quite permissible to award a higher degree of punishment to them. Such a course appears to be quite permissible as will be clear from the decision of the Supreme Court in *Workmen of Motor Industries Co. Ltd. v. MICO* (1969) 2 L.J. 673.

The decision of the Delhi High Court in *Usha Kumar v. Super Bazar Co-operative Store Ltd.* (1991) 1 C.L.R. (H. C. Del.) 840, is clearly distinguishable on facts. The punishment of dismissal in that case was considered to be too harsh on the ground that the misconduct was not serious and another employee similarly charged was given much lesser punishment. The question as to whether the misconduct in a given case is serious or not has to be determined on the facts of each case. The misconduct of a person who actually assaults an officer of the company and instigates other people who do not actually take part in the assault must be considered as more serious than the other persons who were instigated. It would, in my opinion, be quite permissible to award more serious punishment to the persons who have actually indulged in the bodily assault on the officers of the company. The decision of the Supreme Court in *Singara Singh's case* (AIR 1984 SC 1499) is also distinguishable because in that case it was found that when

out of about 1100 members of the Police Force only 1000 were reinstated and there was no distinguishing feature on account of which the remaining were not entitled to reinstatement. It may however be pointed out that in that case the Supreme Court held that there was no justification in treating the persons who were not reinstated differently without pointing out how they were guilty of more serious misconduct or the degree of indiscipline in their case was higher than compared to those who were reinstated. It must necessarily follow from the decision of *Singara Singh's case* itself that if some persons are guilty of more serious misconduct than the other persons who were also similarly charged, it would be quite permissible to award higher punishment to such persons found guilty of serious misconduct.

With regard to the contention in paragraph 6 under the heading "Allegation of illegal strike with effect from 23-3-1990", the argument was that the workers were charged with misconduct of participation in illegal strike but according to the management in paragraph 33 of the written statement "the workers have not been penalised merely for participation in strike." An inference is sought to be drawn that even according to the management, the charge of participation in strike by the 5 dismissed workers is not sustainable and consequently "there is a remission to the 5 dismissed workers for imposition of punishment". The assumption made by the learned counsel for the Union is not justified. What is stated in paragraph 33 of the written statement is as follows :—

"With reference to para 5, the company says that from the dismissal orders and the findings of the Inquiry Officer it is clear that the workmen have been punished essentially for taking an active, leading and vital role in the incident of assault on the two officers of the company and not merely for participating in the illegal strike."

This plea cannot be understood as meaning that the company has overlooked the misconduct of participation in illegal strike. The stand of the company is that the punishment of dismissal is "not merely for participating in the illegal strike" but that the punishment is essentially for taking active, leading and vital role in the incident of assault. This means that it is the participation of the five workmen in the assault which has weighed more while awarding punishment. There is no justification for the assumption that "there is a remission to the 5 dismissed workers for imposition of punishment" as put in the written note.

It is further argued that the disciplinary action is vindictive and revengeful. The grounds on which the disciplinary action is sought to be challenged as vindictive and revengeful are the following :—

- (1) The charge-sheets have been issued on 8-4-1990 within two days of the incident of assault which has taken place on 6-4-1990 and while police investigation was in progress.
- (2) The charge-sheets did not make any mention of the fact that the delinquent workers were entitled to nominate their representatives to defend their cases.
- (3) The proceedings have been initiated without any complaint from the victims of the assault.
- (4) The Inquiry Officer, T. K. Bose, was vindictive and revengeful while the outlook of Shri Wadhvani who was originally appointed as the Inquiry Officer was sober and impartial.
- (5) The Inquiry Officer entertained Jain as the representative of the Management on his own accord and Jain had sub-delegated his authority to B. B. Dutta and the Inquiry Officer has accepted him as the representative of the Management without any objection.
- (6) All the witnesses are working under the Management and all of them are, therefore, interested witnesses and the witness could therefore be pressurised.

- (7) The medical certificate of Dr. Mamidwar does not mention the age of the injury and Dr. Mamidwar is also an interested person.
- (8) Shri Gupta and Shri Nagpure who were also there along with the assaulted persons have not received any injury and therefore this proves that Narhari and Viveksing must have been assaulted by some other persons for some other purpose at some other place and time.
- (9) In reality there was no such incident of assault.

Along with these grounds, it is also desirable to deal with the other contention at paragraph 7(b) which is raised under the heading "Bias of the Inquiry Officer" under which it is alleged that the attitude of T. K. Bose towards the Union workers was indifferent. Along with this, the other contention taken is that Bose has written all the proceedings somewhere else and he has thereafter obtained signatures of Jain, Dutta and other witnesses. It is also contended that the Company had not submitted any list of witnesses or documents which again indicated the bias of the Inquiry Officer.

Some of these contentions necessarily require going into the evidence recorded in the course of the inquiry proceedings. Though it is quite permissible in these proceedings on the reference to arbitration to ascertain whether the findings recorded by the Inquiry Officer are perverse or wholly unjustified by the material on record, it is necessary to point out that the evidence which was relied upon at the stage of arguments was only the evidence which was recorded in these proceedings and no attempt was made on behalf of the Union to establish the contention that no incident of assault had at all taken place by making any reference to the evidence recorded in the inquiry proceedings and particularly the evidence of the victims of the assault.

The fact that the charge-sheet is given within a short period of two days of the incident does not negative the fact of the assault and if the fact of the assault of Narhari and Viveksing is established, there can be no dispute that proceedings against the guilty persons could be properly initiated even without any specific complaint to the Management by the two victims of the assault.

The reference to the fact that it was not mentioned in the charge-sheet that the charge-sheeted workers could nominate persons whose assistance they would like to take to defend their case is also, in my opinion, wholly irrelevant. The explanation of the Management is that since all the workers were on strike, they did not call for the names of the co-workers for assisting the charge-sheeted workmen while in the charge-sheeted referred to by the workmen such a reference was made because during that period there was no strike. Apart from this, it needs to be pointed out that once the Inquiry Officer is found to be justified in proceeding with the inquiry *ex parte*, there was no question of any prejudice being caused to the dismissed workmen because of non-mention of the fact that they were entitled to nominate co-workers. There is also no legal requirement which requires calling for names of co-workers at the inquiry. I may however point out that Bose has clearly stated in his evidence that he would have given permission to the charge-sheeted workmen to be assisted by co-workers if they had asked for it. The Union is not entitled to make any grievance of the absence of list of documents or list of witnesses in the charge-sheet. It is undoubtedly true that in the course of a domestic inquiry, the delinquent is entitled to know the documents on which the management relies for substantiating the charge and the names of witnesses who are proposed to be examined by the management. There is no requirement that all this must be given in advance. It is quite permissible for the Inquiry Officer to furnish this information and the documents before commencement of the inquiry. The inquiry proceedings would have been vitiated by non-supply of documents only if the charged workmen had taken part in the inquiry and the Inquiry Officer would have proceeded to make the inquiry before making the documents to be used at the enquiry available for inspection to the workmen. This view is clearly supported by the decision of the Supreme Court in *Delhi Cotton and General Mills Company Ltd. v. Ganesh Dutt*, (1972) 1 LLJ page 172 and 178. If the workers had taken

part in the inquiry they could have even asked the Inquiry Officer, if they already did not know the names of the witnesses, for time to cross-examine the witnesses. It is pertinent to note that Bose has clearly stated that if any of the charge-sheeted workmen had asked for time he would have granted time and that even if the Union had requested for time, he would have granted them time. The contention that Bose was vindictive and revengeful is liable to be rejected out of hand because there is nothing in his cross-examination on which such a charge can be sustained. Similarly if certain documents have been produced by the management through Jain or Bose, that did not vitiate the inquiry especially when none of the documents appear to be irrelevant. The Inquiry Officer was bound to find out the truth of the allegation as to the fact of the assault and the involvement of any of the charge-sheeted employees and all material documents could be considered by him.

The contention that independent persons outside the Company should have been examined and without such witnesses being examined the charges cannot be held to be proved is wholly unjustified. The two crucial witnesses examined in this case during the course of the inquiry were Narhari and Viveksing. They have deposed to the nature of the assault on them; they have deposed to the nature of the injuries received by them and they have also deposed to the persons who assaulted them. I have carefully gone through their evidence. The fact that Viveksing received injury on his left eye and left ear can hardly be in dispute. It is too much to suggest that the certificate issued by Dr. Karlekar and Dr. Mamidwar are fabricated. If these two doctors have treated the victims of the assault, their evidence cannot be rejected, on the ground that they were interested witnesses. It is not only normal but natural that the victims of the assault would immediately go to the medical officer of the company. Therefore the fact that Dr. Karlekar was the Manager, Health Services, at the Chanda Cement Works cannot be a ground for rejecting his evidence. Being in the employment of the company in the Health Services Department, it was obligatory on him to take these persons for further treatment and there is nothing on which the evidence of Dr. Karlekar and the certificates produced by him could be rejected. The certificate of Dr. Bhatt shows that Narhari had sustained crack of his nasal bone; Viveksing had actually to be operated upon and Dr. Bhatt has performed the operation on 7-4-1990 and Viveksing was discharged from the hospital on 9-4-1990. The grounds on which these certificates have been challenged are, in my opinion, extremely flimsy. Having gone through the evidence, I find that the Enquiry Officer had rightly accepted the evidence of Narhari and Viveksing. Their evidence that they had suffered injuries is corroborated by the medical evidence consisting of the certificates and the evidence of Dr. Karlekar. Their evidence that the injuries were caused in the assault on them on 6-4-1990 is clearly corroborated by the evidence of Nagpure and Gupta who were at the spot in the respective trucks. The fact that Nagpure and Gupta were not assaulted is not relevant. It is too much to suggest that no incident of assault had at all taken place and that the victims had received the injuries at some other place. Narhari has clearly stated that Ravi pulled him out of the truck and hit him with the chappal on the face. He has also stated that Khade hit him with the helmet on nose and back and felled him down and further other people had hit him with hands and legs. Viveksing has stated that Bhongale hit him with leg and felled him. He has also named Giri and Milmile as having assaulted him after pulling him out of the truck.

This evidence is clearly corroborated by the evidence of Nagpure, Officer-Mines who was with Narhari in the truck and by the evidence of S. K. Gupta, Officer-Mines, who was with Viveksing in the truck. They have also named those five persons as instigating other persons to take part in the assault.

It does not appear from the evidence on record that the conclusion reached by the Inquiry Officer and the Owner is in any way unjustified, much less perverse. Apart from the fact that the Enquiry Officer was entitled to reach his conclusion on the evidence on record with regard to the incident of assault, even I am satisfied on going through the evidence that on 6-4-1990 Narhari and Viveksing were pulled out of the truck and were assaulted as deposed to by

them. The persons who have been awarded punishment of dismissal are the persons who have actually assaulted Narhari and Viveksing and were instigating other persons to take part in the assault.

I have not found any substance in the contention that Bose had any adverse bias against any of the employees. The mere fact that he had taken part in some negotiations does not lead to the inference that there was bias against any employees. Merely being in the employment of the Company cannot be a ground for the charge that the Enquiry Officer was acting in a biased manner. So far as the proceedings in the inquiry are concerned and the charge that the proceedings have been fabricated, I have already indicated earlier that no such allegation was put to the Enquiry Officer. The contention that this was not put to the Enquiry Officer because he would have stuck to his version is no justification for holding that the documents were fabricated. The evidence recorded by me does not lead to the conclusion that the documents have been fabricated. In the absence of such a grave allegation being not put to Bose, it will not be permissible to charge the Enquiry Officer with having manipulated the documents.

It is then contended that day to day proceedings should have been made available to the charge-sheeted employees. If any employee refuses to take part in the inquiry, there is no such obligation on the part of the Enquiry Officer to make available the day to day proceedings of the inquiry to the workmen.

It is then contended that the imposition of penalty of dismissal without a show cause with regard to the penalty is illegal and certain decisions of the Supreme Court which are based on the scope of Article 311 of the Constitution of India are relied upon. These decisions are, in my opinion, of no assistance. The Enquiry proceedings are governed by the Certified Standing Orders of the Company and the Certified Standing Orders do not provide for giving any such opportunity in the matter of punishment. That no such second opportunity in the matter of punishment is necessary in disciplinary proceedings is settled by the decisions of the Supreme Court in *Workmen of B. N. Mills v. B. and C. Mills, Madras, (1970) 1 LJI page 26* and in *ACC Ltd. v. Srivastava, (1984) LIC 864*. The latter case was a case dealing expressly with the Certified Standing Orders of the Associated Cement Company Limited and it was held by the Supreme Court in paragraph 8, that the Standing Orders do not provide for a second opportunity to show cause against punishment.

The contention that there is violation of principles of natural justice is not open to the Union as the workmen had declined to take part in the inquiry.

In so far as the contention that the inquiry report is liable to be rejected as being unreasoned is also wholly unjustified. It is true that the Inquiry Officer while recording his findings has held that the charges set out in the charge-sheets issued to the workmen were proved. It is true that he has not recorded a separate finding in respect of each charge. But it is obvious that these observations have to be read in the light of the charges reproduced by him in paragraph 2 of his report. The first charge reproduced by him was that the charge-sheeted employees were charged for having gone on an illegal and unjustified strike from 23rd March 1990.

It is not shown even at this stage that the strike was legal.

The second charge was with regard to the assault and merciless beating. The charge was in respect of the assault near the rope-way loading station. The charge-sheet will show that the charge in respect of misconduct under Clause 19(iv)(a) and (c) of the Standing Orders was made. Now it is true that there is no satisfactory evidence that the place where the assault took place was the property of company or the premises of the company. The rope-way goes over-head and there is no clear evidence that the road on which the trucks were intercepted belonged to the company. In any case, it is obvious that the charge of misconduct under Clause 19(iv)(c) stood adequately and com-

pletely proved. The workmen who took part in the assault and the persons who were assaulted were all employees of the company and if some workmen assault other workmen, such conduct directly affects the discipline of the company. This has also a material bearing on the smooth and efficient working of the Company because in the instant case Viveksing and Narhari were performing their duty of patrolling the rope-way of the Company, the safety of which had to be guarded for the purpose of the working of the Company. There is, therefore, no doubt that the charge of misconduct under Clause 19(iv)(c) was adequately proved. Similarly the charge of using abusive and insulting language and conduct endangering the life or safety of two other employees of the Company must also be held to be proved.

Having given my anxious consideration to all the contentions raised on both sides and the nature of the inquiry conducted and the evidence recorded in the course of the inquiry, I am satisfied that the order of dismissal does not call for any interference. Once it is established that the five employees of the Company have assaulted two other employees who were discharging their duties, such conduct cannot be condoned. Condonation of such conduct or even taking a lenient view in the matter of punishment will not be in the interest of discipline and good administration. I must, therefore, make an Award that the dismissal of the five workmen, namely (1) Shri L. Z. Khade, (2) Shri P. D. Bhongale, (3) Shri P. L. Milmlle, (4) Shri Y. V. Raut and (5) Shri S. K. Giri is proper and justified and consequently they are not entitled to any relief.

Bombay,

20th March, 1992

M. N. CHANDURKAR, Arbitrator

नई दिल्ली, 13 अप्रैल, 1992

का. घा. 1214—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, उद्योग वि. उद्योगमण्डल के प्रबन्धन के संज्ञक नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण कम लेबर कोर्ट, एरनाकुलम के पंचपट को प्रकाशित करती है जो केन्द्रीय सरकार को 13-4-92 को प्राप्त हुआ था।

[संख्या एन—29012/28/88—डी-III (बी)]

बी. एम. डेविड, डेस्क अधिकारी

New Delhi, the 13th April, 1992

S.O. 1214.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal Cum-Labour Court, Ernakulam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Indian Rare Earths Ltd., Udyogamandal and their workmen, which was received by the Central Government on the 13-4-92.

[No. L-29012/28/88-D.III(B)]

D. M. DAVID, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT LABOUR COURT,
ERNAKULAM

(Labour Court, Ernakulam)

(Monday, the 6th day of April, 1992)

PRESENT:

Shri R. Raveendren, B.A., B.L., Presiding Officer

Industrial Dispute No. 3 of 1989(C)

BETWEEN

The General Manager, Indian Rare Earths Ltd., P.O.
Udyogamandal, 683501, Dist. Srnakulam, Kerala.

AND

The General Secretary, Indian Rare Earths Progressive Thozhilali Union, P.O. Udyogamandal-683501, Dist. Ernakulam, Kerala.

REPRESENTATIONS—

M/s. Menon & Pai.

Advocate, Cochin-682011—For Management

M/s. K. Balachandran & M. Jayakumar, Advocate.
Cochin-682017—For Workman.

AWARD

"Whereas the action of the management of the Indian Rare Earth Ltd., Udyogamandal, District Ernakulam, Kerala in imposing the punishment or withholding of two increments for one year without cumulative effect on Sri V. J. George, Operator, Boiler/Water Works is justified. If not, to what relief the workman concerned is entitled?" is the issue referred for adjudication to this Court as per Order No. L-29012/28/88-D.III(B) dated 18-1-1989.

2. The Union has filed claim statement stating as follows :—

Sri. V. J. George is employed as an Operator in Indian Rare Earths Ltd., Udyogamandal. While so a memo of charge was issued to him alleging as follows :—"You are hereby charged with having committed the following misconducts coming under the provisions of the certified standing orders of the company applicable to you, namely 34(r) ————— any act subversive of discipline 34(r) ————— Distribution or exhibition with in the company's premises of any news papers, hand bills, posters of pamphlets without the sanction of the management, in that on 13-5-1985 at about 7.45 hrs. you stuck two hand bills on the compound wall of the factory nears the main gate, which read as follows :—

(REGIONAL LANGUAGE)

An enquiry in to the said charges was conducted by Sri T. Rama Varma, who found him guilty for charge under standing order 34(r). Regarding the other charge the enquiry officer found him not guilty. Accepting the findings of the enquiry officer, the management has awarded the punishment of reduction of salary by two increments with immediate effect and fixed the salary at Rs. 555 in the scale of Rs. 420-12-530 25-605-50-950. Against this, Sri George has filed an appeal to the Board of Directors. The Chairman has modified the punishment and reduced it to one of withholding of two increments for one year without any cumulative effect. Being aggrieved with this the union has raised an industrial dispute. It was an act of victimisation amounting to unfair labour practice. Sri V. J. George was not in good terms with some of the managerial staff. The charge framed against him is a fabricated one. There was absolutely no evidence to hold that Sri George has committed the misconduct. Findings of the enquiry officer are perverse. He has not analysed the evidence properly. He has also conducted the enquiry in a partisan manner and allowed the management to produce and mark documents without giving any prior notice to the delinquent workmen. The enquiry officer has also acted as a presiding officer. The enquiry officer had built up the entire case on conjecture. The enquiry officer has mis read the evidence and misinterpreted the documents. The enquiry was not at all fair and proper. It was against the principles of natural justice. The delinquent workman has not committed the misconduct. The punishment is excessive and disproportionate and the punishment awarded cannot be justified.

3. The management has filed written statement contending as follows :—

Sri V. J. George was working as Operator, Boiler/Water Works section in the management establishment. He has been issued with a show cause notice alleging that he stuck two hand bills on the compound wall of the factory near the main factory gate in spite of the instruction of the guard on duty at the main gate not to stick bills. The above allegations, if proved, would amount to misconduct under the certified standing orders of the company applicable to the workman. He submitted his explanation which was found to be unsatisfactory. Therefore the management decided to conduct a domestic enquiry and an enquiry officer was appointed by the management and the enquiry officer conducted the enquiry in compliance with the principles of natural justice. The

workman participated in the enquiry with the assistance of a co-worker, who was also the General Secretary of the IRE Employees Union of which Sri George was then a Member. All the witnesses who were examined in support of the charges were elaborately cross examined on behalf of Sri George. The list of documents and witnesses of the management were served on Sri George in advance. Carbon copies of the proceedings of enquiry were also given to him, then and there. On the basis of the evidence in the enquiry, the enquiry officer found that Sri George is guilty of the misconduct under Clause 34(r) of the certified standing orders of the company. The misconduct thus proved against Sri. George was very serious calling for severe disciplinary action. In the past also, he had been given several punishments on different occasions. However taking a lenient view it was decided to award the punishment of reduction of salary by two increments with effect from 26-9-85. On receipt of the above punishment Sri. George submitted an appeal to the managing director. The above appeal filed by Sri George was barred by limitation. However, the Managing Director entertained the appeal and re-considered the entire proceedings against Sri. George. The Appellate Authority observed that a further lenient view could be taken against Sri. George and therefore decided to intervene and modify the punishment awarded to him by the disciplinary authority to entertain him. Accordingly, the Punishment awarded to Sri V. J. George was modified to the extent that two increments shall be withheld from his salary for one year without any cumulative effect with effect from 25-9-85. Subject to this Sri George will draw his increments as and when it is due on the date when it falls due. In the light of the above, it will be seen that maximum lenience was shown to Sri George by the Management. It may also be noted that the past record of service of Sri. George was bad. In spite of that the management has decided to give him one more opportunity to improve instead of taking severe action against him. In the circumstances, it is submitted that the punishment of withholding of two increments for one year without cumulative effect on Sri V. J. George is perfectly legal and proper and is not liable to be interfered with by this court on any ground. In case it is found by this court that the domestic enquiry is vitiated on any ground, the management may be permitted to adduce fresh evidence to substantiate the charges that led to the above punishment.

4. The management has also filed additional written statement contending as follows :—

The management emphatically denies that there is any act of victimisation or unfair labour practice in withholding of two increments for one year without cumulative effect by way of punishment to Sri V. J. George after proving the misconduct committed by him in a properly constituted domestic enquiry. The allegation that Sri. V. J. George was not in good terms with some of the managerial staff is not admitted. In any event, his relationship with the managerial staff has nothing to do with the enquiry and the misconduct. The evidence produced at the time of enquiry and the submissions of the witnesses were taken into consideration by the enquiry officer before finding Sri George guilty of misconducts. Sri George had also never mentioned earlier that the enquiry was conducted violating the principles of natural justice. There is no merit or substance in the contention that there was no evidence to hold that Sri George has committed the misconduct and that the findings of the enquiry officer are perverse. The enquiry officer had found him guilty of the misconduct on the basis of the evidence adduced by the witnesses and also based on the documents produced. The allegation that the enquiry officer has misread the witnesses' evidence and misinterpreted the documents produced at the time of the enquiry are hereby denied. The findings of the enquiry officer were not perverse. The punishment is also not excessive and disproportionate.

5. The points that arise for consideration are whether the enquiry conducted by the enquiry officer is legal and proper and whether the findings of the enquiry officer are perverse, and the punishment imposed on the delinquent is justified.

6. For the Management Ext. M1 was marked.

7. While Sri George was working as Operator, Boiler/Water Works section in the management establishment, a memo of charge was issued to him calling for his explanation why disciplinary action should not be initiated against

him. He submitted his explanation denying the charges. Not satisfied with the explanation submitted by him the management decided to conduct a domestic enquiry by appointing an enquiry officer. The enquiry officer held the enquiry and made the report Ext. M1 finding the delinquent guilty of the misconduct under clause 34(r) of the standing orders applicable to the delinquent. Accepting the findings of the enquiry officer the management awarded the punishment of reduction of salary by 2 increments without any cumulative effect. Aggrieved by the said punishment the union espoused the cause by raising an Industrial Dispute which culminated in this reference.

8. The workman is challenging the enquiry and the report on the grounds that the findings entered by the enquiry officer are perverse and the alleged misconduct is an act of victimisation and the punishment imposed is excessive. The management would contend that the enquiry officer has conducted the enquiry following the principles of natural justice and the findings are entered by the enquiry officer on the basis of the evidence available in the enquiry. There is no victimisation in charge sheeting the delinquent who committed the misconduct. It can be seen that the workman has no contention that the enquiry officer conducted the enquiry in violation of the principles of natural justice. Ext. M1 is the file containing the procedure followed by the enquiry officer in the enquiry and the evidence taken in the enquiry and the findings of the enquiry officer on the basis of the evidence available in the enquiry. On perusal of Ext. M1 would go to show that the enquiry officer has conducted the enquiry following the principles of natural justice by giving sufficient opportunity to the delinquent of being heard. He was allowed to participate in the enquiry by engaging a co-worker. He was supplied with list of documents and list of witnesses sufficiently early, before the commencement of enquiry. It can also be seen that he has participated in the enquiry throughout by cross-examining the witness of the management. In these circumstances, I find that the enquiry officer has conducted the enquiry following the principles of natural justice.

9. Concerning the finding, it was found by the enquiry officer that the delinquent is guilty of misconduct understanding order No. 34(r) for the distribution or exhibition within the company's premises of any newspaper, hand bills, posters or pamphlets without the consent of the management. In the evidence MW1 to MW4 and Ext. M2 would amply prove the fact that the delinquent has committed the misconduct under clause 34(r) of the standing orders. Hence I find that the enquiry officer has entered the findings on the basis of the evidence available in the enquiry and these findings cannot be termed as perverse.

10. It can be seen that the punishment was imposed on the delinquent on the basis of the finding entered in a properly constituted enquiry. Therefore it cannot be said that the punishment is imposed on the delinquent as an act of victimisation.

11. The delinquent would contend that the punishment imposed on him is excessive and disproportionate. But it is pertinent to note that the punishment imposed on him is the reduction of salary by withholding 2 increments without cumulative effect. Therefore the punishment imposed by the management on the delinquent cannot be interfered by invoking Section 11A of the Industrial Disputes Act. Hence I find that the punishment imposed on the delinquent is not excessive and disproportionate and the punishment is justifiable.

12. In the result, an award is passed holding that the enquiry conducted by the Enquiry Officer is legal and proper and the findings entered by the Enquiry Officer are not perverse and the punishment imposed on the delinquent is justified and the punishment imposed on the delinquent is not as an act of victimisation.

Ernakulam,
6-4-1992.

R. RAVEENDRAN, Presiding Officer
APPENDIX

Exhibit marked on the side of Management :

Ext. M1.—File containing original enquiry proceedings, findings of the Enquiry Officer, documents marked and other connected papers.

1020 GI/92—3

नई दिल्ली, 13 अप्रैल, 1992

का. आ. 1215.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मै. थेराप्यूटिक्स कैमिकल्स रिसर्च कॉर्पोरेशन, मार्गाओ, गोवा के प्रबन्धकों के संबंध में उनके कर्मचारियों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2, बम्बई के पंचपट को प्रकाशित करती है जो केन्द्रीय सरकार को 13-4-92 को प्राप्त हुआ था।

[संख्या एल.—29011/37/88—जी-III (बी)]

बी. एम. डेविड, डेस्क अधिकारी

New Delhi, the 13th April, 1992

S.O. 1215.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 2, Bombay as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Therapeutics Chemical Research Corporation, Margao, Goa and their workmen, which was received by the Central Government on the 13-4-92.

[No. L-29011/37/88-D.III(B)]
B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, AT BOMBAY

PRESENT :

Shri P. D. Apshankar, Presiding Officer.

Reference No. CGIT. 2/55 of 1988

PARTIES :

Employers in relation to the management of M/s. Therapeutics Chemicals Research Corporation, Margao, Goa

AND

Their workmen.

APPEARANCES :

For the Employer—Shri M. S. Bandodkar, Advocate.

For the Workmen—Shri Subhash Naik, Representative.

INDUSTRY : Chemical.

STATE : Goa.

Bombay, dated the 1st April, 1992

AWARD

1. The Central Government by their order No. L-29011/37/88-D.III(B) dated 29-11-1988 have referred the following industrial dispute to this Tribunal for adjudication u/Sec. 10(1)(d) of the Industrial Dispute Act.

"Whether the action of the management of M/s. Therapeutics Chemical Research Corporation, Margao, in retrenching S/Shri S. Belgaonkar, Anthony Martins, D. R. Dabholkar, Shaikh Mohidin and S. T. Fonseca, Samplers, with effect from 7-3-1988, is justified. If not, what relief the said workmen are entitled to?"

2. The abovesaid five workmen in question filed their respective statements of claim challenging the said action of the management.

3. The management filed their written statement in support of their action.

4. Thereafter, while the reference was at the stage of evidence, all the workmen in question and the management came to an amicable settlement, and filed the terms of their settlement, which are thus :—

(1) It is agreed between the parties that the workman shall be paid an amount of Rs. 31,000 (Rupees Thirty one thousand only). This amount includes payment towards Gratuity, Leave Salary, Bonus,

Overtime, Salary, Notice Pay, Retrenchment compensation and any other dues arising out of his employment with TCRC.

- (2) The amount mentioned shall be paid on or before 9-1-1992.
- (3) The workman confirms that the said amount Rs. 31,000 (Rupees Thirty one thousand only) is a full and final settlement of his dues arising out of his employment with the company and he confirms that he has no further claim against TCRC of whatsoever nature including any claim of re-instatement or re-employment.
- (4) Parties agree to place this settlement before the Central Government Industrial Tribunal No. 2 for appropriate Award/Order for disposing the reference CGIT-2/55 of 1988 and application No. LC-2/519 of 1988 pending before him in terms of this settlement.

5. As per this settlement, each of the workmen is to get a sum of Rs. 31,000 from the management. The workmen have produced the copies of the receipts dated 9-1-1992 showing that each of them actually got the amount of Rs. 31,000 from the management. The said settlement of 9-1-1992 has been signed by each of the said workmen, and by the Manager of the Company. It has been executed before the Notary of Goa. I find that the said settlement is quite in the interest of both the parties. As such I accept it.

6. Therefore, the Award is drawn in terms of the said settlement.

P. D. APSHANKAR, Presiding Officer

नई दिल्ली, 16 अप्रैल, 1992

का. मा. 1216—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, केरला मिनेरल्स एण्ड मेटल्स लि. के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में औद्योगिक अधिकरण, कोलम के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-4-92 को प्राप्त हुआ था।

[संख्या एल—29012/30/91—आई. आर. (विधि)]

डी. एम. डेविड, डेस्क अधिकारी।

New Delhi, the 16th April, 1992

S.O. 1216.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Kollam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Kerala Minerals and Metals Ltd. and their workmen, which was received by the Central Government on the 16-4-92.

[No. L-29012/30/91-IR(Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

IN THE COURT OF THE INDUSTRIAL TRIBUNAL,
KOLLAM

(Dated this the 9th day of April, 1992)

PRESENT

Shri C. N. Sasidharan, Industrial Tribunal.

IN

INDUSTRIAL DISPUTE NO. 53/91

BETWEEN

The Managing Director, Kerala Minerals & Metals Ltd.,
Kollam.

(By Sri U. K. Ramakrishnan & P. V. Lohithakshan,
Advocates).

AND

The President, Titanium Complex Workers Association
Sankaramangalam, Chavara P. O. Kollam.

(By Sri T. Ramakrishna Kurup, Advocate, Quilon).

AWARD

The Government of India as per Order No. L-29012/30/91-IR (Misc.) dated 6-12-1991 have referred this Industrial dispute for adjudication.

The issue for adjudication is :

"Whether the action of the management of Kerala Minerals and Metals Ltd. in not re-employing Sri Cleetus Joseph in service on the principle of natural justice is justified? If not to what relief the concerned workman is entitled to?"

2. This Tribunal has issued notice to both sides. Accordingly both sides entered appearance through counsel before this Tribunal and the case stood posted for claim statement of the union on 21-2-1992. On that day the union, the concerned worker and counsel remained absent without any reason whatsoever. No adjournment was also sought on behalf of the union. Hence the union was set ex-parte. The management has filed an affidavit in support of their case.

3. In the affidavit filed by the Industrial Relations Officer of the management he has averred that Sri Cleetus Joseph, the workman involved in this dispute is not entitled for re-employment under the management that the management has not acted against the workman in violation of the principles of natural justice that the workman while working as Technician Grade B submitted his resignation from the service of the management on 1-12-1989 that the management accepted the resignation and the matter of acceptance was informed the workman that the workman was relieved from service of the Company that though the workman requested for withdrawal of the resignation after attending work on 16-12-1989 it was not allowed and that the workman seized to be an employee of the company pursuant to his resignation. The further averment is that there is not merit or basis in the dispute now raised by the union and that the management is not liable to reemploy Sri Cleetus Joseph as demanded by the union.

4. In the absence of contest I accept the affidavit filed by the management and hold that the workman Sri. Cleetus Joseph is not entitled to any relief in this reference.

5. An award is passed accordingly and the reference is answered in the negative.

C. N. SASIDHARAN, Industrial Tribunal

नई दिल्ली, 20 अप्रैल, 1992

का. मा. 1217—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बरकत न्यायालय जवल्पुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-4-92 को प्राप्त हुआ था।

[संख्या एल—12012/279/89 आई. आर. (बी-III)]

एस. सी. शर्मा, डेस्क अधिकारी

New Delhi, the 20th April, 1992

S.O. 1217.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of State Bank of India and their workmen, which was received by the Central Government on the 16-4-1992.

[No. L-12012/279/89-IR (B-III)]

S. C. SHARMA, Desk Officer

ANNEXURE

BEFORE SHRI V. N. SHUKLA, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
GUM-LABOUR COURT, JABALPUR (M.P.)

Case No. CGIT/LC(R)(82)/1990

PARTIES :

Employers in relation to the management of State Bank of India, Bhopal (M.P.) and their workman, Shri Chhoutelal Kushwaha, S/o Shri Ganesh Ram Kushwaha, Village Khanugaon, Post Office Nagapura, Ahmedabad Place, Bhopal (MP)-462032.

APPEARANCES :

For Workman—Shri R. C. Shrivastava, Advocate.

For Management—Shri R. Mahndiratta, Advocate.

INDUSTRY : Banking DISTRICT : Bhopal (M.P.)

AWARD

Dated, March 20, 1992

This is a reference made by the Central Government, Ministry of Labour, vide its Notification No. L-12012[279] 89-IR(B-3) Dated 8th March, 1990, for adjudication of the following dispute :—

SCHEDULE

"Whether the action of the State Bank of India, Local Head Office, Bhopal, in terminating services of Shri Chhoutelal Kushwaha, w.e.f. 6-5-85 was just, fair and legal? If not, to what relief the workman is entitled to?"

2. Facts leading to this case are that the workman was initially appointed on 14-12-1985 on the post of Mali and he continued to work on the said post till 6-5-1985 undisputedly on a clear vacant post. His services stood terminated with effect from 6-5-1985.

3. The workman says that he worked honestly and sincerely. He worked for 213 days in different branches prior to the date of his initial appointment. The order of termination is bad in law because no D. E. was held against him and his services were terminated on the ground that he had produced false documents and also manipulated his name to be included in the list sent by the Employment Exchange to the management for the purpose of selection which amounts to conduct, and without holding a departmental enquiry his services could not be terminated.

4. In substance it was a punishment. He is, therefore, entitled to reinstatement with all back wages and other benefits.

5. The management says that on enquiry it was found that he got his name in the list of candidates sent by the Employment Exchange by forgery. On further verification it was revealed that he had produced his certificate with tempered date of birth which read as 1-9-1961 whereas in effect it was 1-9-1957. Therefore as per Rules the services of the workmen were terminated. Para 522.1 of the Sastry Award has been relied upon by the management.

6. Management further says that if it is felt that the enquiry was necessary the management should be afforded an opportunity to prove the misconduct of the workman before this Tribunal.

7. This is a case where the workman, Shri Chhoutelal Kushwaha, worked with the management on probation for a short period from 14-12-1985 to 6-5-1985. It is pertinent to note that though the workman was aware of the facts on which grounds his services were terminated. He has not denied them. Even by way of rejoinder the workman did not deny the acts of misconduct on the part of a workman viz. (1) forgery made by the workman in the list sent by the Employment Exchange by inserting his name; and (2) forgery made in the birth certificate (See proceedings dated 11-12-1991). In view of these facts, this Tribunal would call upon the management to prove the misconduct of the workman concerned. As laid down in the case of Bishan Lal

Gupta Vs. The State of Haryana and others (reported in AIR 1978 SC p. 363) a formal enquiry was required and nothing more which has certainly been done in this case. In the case of State of Gujarat Vs. Sharadchandra Manohar Neve reported in AIR 1988 SC p. 338 no enquiry was necessary because there was a termination of his services simpliciter. It is true that there was a misconduct behind it but at the same time it was termination simpliciter in the context of the case. That apart, unless the rules say, an order of termination of service of a probationer would not amount to punishment. In no case, in view of the implied admission of the workman, no departmental enquiry was necessary. In the instant case and the case of Babu Lal Vs. The State of Haryana and Ors. reported in 1991-II-LLJ p. 327 as also Shri Prakash Mishra Vs. Sports Authority of India reported in 1990-II-LLJ p. 411 as also Biswajit Dev Roy Vs. Indian Overseas Bank and others reported in 1987-I-LLJ p. 288 would not come to the aid of the workman irrespective of the fact that the services of the workman were terminated on account of his alleged misconduct and they might amount to removal from service.

8. The workman is not entitled to any relief. Reference is accordingly answered as under :—

The action of the State Bank of India, Local Head Office, Bhopal, in terminating services of Shri Chhoutelal Kushwaha, w.e.f. 6-5-85 was just, fair and legal. He is not entitled to any relief. No order as to costs.

V. N. SHUKLA, Presiding Officer

नई दिल्ली, 20 अप्रैल, 1992

का.प्र. 1218—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एन एण्ड सेल फैक्ट्री, कलकत्ता के प्रबंधन के संबंध निम्नलिखितों और उनके कर्मचारियों के बीच, अनुबंध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कलकत्ता के पंचवट को प्रकाशित करती है, जो केन्द्रीय सरकार को ... प्राप्त हुआ था।

[सं.एन-14012/7/86-डी-2 बी]/(पीटी)]

के.वा.बा. उन्नी, डेस्क अधिकारी

New Delhi, the 20th April, 1992

S.O. 1218.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Gun and Shell Factory, Cassipore, Calcutta and their workmen, which was received by the Central Government on—

[No. L-14012/7/86-DII(B)(Pt.)]

K.V.B. UNNY, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL AT CALCUTTA

Reference No. 133 of 1988

PARTIES :

Employers in relation to the management of Gun & Shell Factory, Cossipore, Calcutta-2

AND

Their Workman.

PRESENT :

Mr. Justice Manash Nath Roy—Presiding Officer.

APPEARANCE :

On behalf of Management.—Mr. Tapas Sumar Chowdhury, Advocate.

On behalf of Workman.—Mr. Tarak Nath Mukherjee, Workman—in person.

STATE : West Bengal. INDUSTRY : Gun & Shell.

AWARD

Whether the dismissal of Shri Tarak Nath Mukherjee (hereinafter referred to as the said workman), ex-labourer 'B', by the management of M/s. Gun & Shell Factory, Cossipore, Calcutta (hereinafter referred to as the said employer) was justified? If not, to what belief the said workman, was entitled to, was referred for adjudication before this Tribunal, by Government Order of Reference No. L-14012/7/86-D.II(B) dated 21st September 1987, by the appropriate Government, in exercise of the powers conferred by Clause (d) of Subsection (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as the said Act).

2. On usual notices being issued, parties to the reference entered appearance. The said workman appeared in person, excepting on September 26, 1991, when he appeared through Mr. Jagjiban Ghosh, a learned Advocate and barring few occasions, the said employer was represented by learned Advocates and the pleadings were completed, after some adjournments were taken by them.

3. The purported Written Statement by the said workman was filed on 28th November 1988. The fact, why I have describes the said statement, as a purported one, will appear from the statements as recorded hereafter.

4. In his said statement, the said workman has stated that he was a victim of unfair labour practice of the said employer, who had no respect and regard for principles of natural justice and fair play.

5. It was his case that he served in different Ordnance Factories in West Bengal and was appointed afresh, under the said employer, with effect from January 2, 1978 and from such appointment, he was being harassed and was even asked to perform such duties including sweeping, which was not his job and ultimately, on August 28, 1983, a charge sheet was issued against him, on allegations, which were incorrect, false and baseless. The charge against him as would appear hereafter, was on account of unauthorised absence.

6. It was the case of the said workman that he duly filed his replies to that charge sheet, but, the said employer, without carrying to enquire into the matter, decided to hold an enquiry, wherein, he was not given any opportunity to defend himself and he has also alleged that the enquiry was conducted and completed in violation of principles of natural justice and he further claimed the enquiry, to be a sham one.

7. It has been stated that after such enquiry, the said workman was dismissed from service with effect from February 28, 1984 and he has also claimed the letter of termination to be illegal, as the same was issued by an officer, who was below the rank of the appointing authority.

8. It was the further case of the said workman that thereafter, he challenged the termination, before the said management, who did not reply to his represen-

tation and as such he raised the dispute before the Labour Commissioner, under Section 2A of the said Act. He has also stated to have preferred an Appeal against the order of termination on May, 29, 1985, but without any effect or avail and as such, he has stated to have given a reminder for the Reference. He has also alleged that in the Conciliation proceedings, the said employer showed utter disregard and disrespect, by not attending the same.

9. In the circumstances, the said workman has prayed for necessary declaration that his termination was illegal, improper and void. He has also prayed for other ancillary and consequential reliefs.

10. In the Written Statement, which was filed on March 21, 1989, apart from denying the material allegations, the said employer has claimed the proceedings to be barred and not maintainable, on principles of Waiver, acquiescence and estoppel and have also stated that no cause or case, has been made out for interference under the said Act. It was also claimed that the said workman has no right to maintain the proceedings.

11. The said employers have further alleged that the said statements and allegations of the said workman were far from being true and have claimed the action as taken, to be due, legal and proper. It has been stated that the workman was removed for his continued unauthorised absence, after complying with the provisions of Central Civil Services (Classification Control Appeal) Rules, 1965 (hereinafter referred to as the said Rules), and that too, after holding the necessary inquiry, in terms of Rule 14 of the same. In fact, it has been stated that the said workman has removed in accordance with the relevant Rules.

12. It has been indicated that the said workman was employed as a labourer 'B' with effect from January 30, 1978 and was detailed to do such work, for which he was suitable or according to his designation and the charge sheet against him, was issued in terms of Rule 14 of the said Rules, on the basis of a report, made against him, by the Labour Bureau Section of the Factory, on the grounds inter alia amongst others, regarding his attendance. It has been agreed that the said workman denied the charges and as such, the Court of enquiry was constituted, who conducted, duly and bonafide, the enquiry on the charges as levelled, on his denial of the charges and in that enquiry, the principles of natural justice were duly followed and not violated as alleged. It has also been alleged that in the enquiry, the said workman did not co-operate duly and even, he refused to sign the enquiry proceedings, which fact, will also appear from the report of the Enquiring Officer. It has also been stated that in that enquiry, the said workman was afforded all and every opportunities and there was no or could be any violation of principles of natural justice. It has further been indicated that as the removal of the said workman was by the General Manager, who was the Disciplinary Authority, so there were no substance on the points as raised by him to the contrary. The Appeal of the said workman has also been duly forwarded to the Appellate Authority. Other allegations, as contained in the said purported written statement of the said workman have been categorically denied. It has

also been indicated that the said workman, on different grounds and cause of action, including those, as put forward now, moved the Writ Jurisdiction of the Hon'ble High Court of Calcutta and that proceedings, on transfer, is pending before the Calcutta Bench of the Administrative Tribunal. In fact, at the hearing, a xerox copy of the said petition, which has on transfer been numbered as T.A. No. 1559 of 1986, was produced and the same has been kept in the record of this proceedings, without any objection. In that proceedings, amongst others, the said workman has claimed for appropriate order, commanding the respondents therein, to show cause, why the purported proceedings of the domestic enquiry against him, should not be quashed and/or set aside. The said workman has not filed any rejoinder to the written statement of the employer.

13. The said workman deposed as WW-1 and claimed his termination, to be illegal, apart from indicating the grounds as mentioned earlier. He tendered as Ext. W-1, a certified copy of the Medical Certificate dated July 25, 1988, from the Chief Medical Officer of Health, 24 Parganas, regarding his health. This certificate, the original whereof was taken back by him, shows that he was referred to Dr. S. K. Roy, physician, M. R. Bangur Hospital, Tollygunge, Calcutta and was kept under observations from July 17, 1978 to July 25, 1978 and no abnormality could be detected on the date of the said certificate and was found fit to join his duty. I fail to understand the relevancy of this document with the matter under dispute and in consideration, but the same only suggests that perhaps for sometime, he was not mentally fit. The charge against him was not of course on that ground. He could not say the date, but remembered to have taken in service after that certificate. He has spoken about a judgement of the Hon'ble High Court at Calcutta, but has not either produced the same or has indicated, what were the matters in issue there or what were the facts of the same. Then he has spoken about his discharge and on that, he made a reference to the Labour Commissioner. Thereafter, he produced as Ext. W-2, a failure report of the conciliation, but the certified or any authenticated copy of the same was not produced. But, I feel that nothing turns on this document, as admittedly, the Conciliation proceedings failed and the Reference under consideration, was made. Strongly enough, in his cross-examination, he denied the filing of his written statement dated November 28, 1988 and continued with such stand, even on repeated askings and opportunities. For this reason, I have earlier mentioned his written statement as purported one, as on his own evidence, there was in fact, no written statement filed by him. In cross examination, he has of course claimed his dismissal/discharge as wrongful and illegal and has also claimed such action, to be against principles of natural justice. A submission on behalf of the said Employer, was sought to be made, that on the date of his evidence, he has crossed the age of superannuation and as such, he was asked about his age, to which, he said that he was 50 years of age and not 60 years 6 months 2 days, as alleged.

14. The evidence on behalf of the said employer was tendered through MW-1. Mr. Karunanoy

Chattopadhyaya, Chargeman TRG, who was appointed as the Presenting Officer at the concerned enquiry, in terms of Ext. M-6 and that will also show that one Mr. S. Ghosh, MW (T), was appointed as the Enquiry Officer and such appointments were made by the General Manager. The copy of the exhibit was sent to the said workman and it will appear from Ext. M-7, he duly received the same on January 23, 1983. The receipt of Ext. M-6 has neither been denied by the said workman nor any cross-examination to that effect was made by him. MW-1 has further stated that the allegations against the said workman, which necessitated the issue of the charge sheet, were his unauthorised absence from May 24, 1983 till his termination and such fact of unauthorised absence/leave, was duly communicated to him and opportunities were given to him and requesting him to join his duties. The above fact will appear from Ext. M-1 and Ext. M-2 and the fact that he received those communications, will appear from Ext. M-3. Such case and the documents in support of the same, were not denied by the said workman or he cross-examined the witness, contradicting his statements.

15. The charge sheet has been produced as Ext. M-4 and the same was claimed to have been served on the said workman by Ext. M-5. The fact of receipt of the charge sheet, which also contained the statement of imputations of misconduct, have not been denied by the said workman. I have already indicated about Exts. M-6 and M-7. It also appeared that the information about the enquiry was given to the said workman by Ext. M-8 and he duly received the same, as will appear from Ext. M-9. The enquiry, as scheduled was held on January 13, 1984, where the said workman was present. The enquiry proceedings have been marked as Ext. M-10 and the same appeared to have been signed by all, excepting the said workman, as he refused to sign them. In that proceedings, although he participated, he took the plea that he will defend the case himself, as he was not allowed the assistance of a lawyer. There is no doubt, he participated in the proceedings without further objection and he further admitted to have absented himself from May 24, 1983 and stated that it would not be possible for him to attend the duties unless the General Manager provided protection to him. This is a case, which he has not duly pleaded in his written statement before this Tribunal. It was admitted by him that even though he has not applied for necessary leave, he has intimated the facts as mentioned above, to the General Manager. Unfortunately, there is no legal evidence available, to establish such fact or that fact, that such information was given to one Mr. N. C. Sircar as claimed, by Registered with A.D. post. Neither the said letter nor the relevant A.D. card have been produced. It also appeared from the recorded proceedings that the said workman refused to cross-examine the prosecution witnesses and he tendered himself as witness and none else, in support of his case. From the recorded proceedings as above, which were of course refused to be signed by the said workman, it would appear that he was given all necessary and required opportunities to defend, but he has not availed of them.

16. The Enquiry Report has been disclosed as Ext. M-11, which was claimed to have been sent and served

on the said workman and there was no denial of such fact by him. Eventhough the enquiry proceedings were not signed by the said workman, I feel that, because of the admitted stand as taken by him and the particulars whereof, have been indicated earlier, and the reasons recorded, those proceedings cannot be deemed to be or considered as void. It should also be noted, from Ext. M-8, it will appear that in terms of Rule 14(B) of the said Rules, the said workman was intimated that he can take the assistance of any other Government servant to present his case and as such, he was also asked to intimate in writing, the name of such Government servant, along with a letter of consent from him. This communication was also duly received by the said workman. But no reply was received from him.

17. From the Enquiry report Ext. M-11, which as stated earlier, was duly communicated to the said workman, it would appear that not only the charges, but the defence of the said workman and so also the findings on evidence, have been categorically indicated and on that basis, it was found that the charge was duly proved. There was no doubt that by Ext. M-12, the said workman was communicated about his removal from service and by Ext. M-14, he was duly communicated about the penalty as imposed and then by Ext. M-15, he was also informed that his appeal was dismissed.

18. From the exhibits as disclosed, it appeared that the said workman, as stated by him, has not really signed the records, although he duly participated. On the basis of the evidence as received and the defence of the said workman, there, in my view, cannot be any doubt that he was afforded all reasonable opportunities, for complying with the principles of natural justice and to disprove the charge against him, but he has signally failed on that account. The stand as taken by the said workman, not only before the Enquiry proceeding, but also before this Tribunal, were difficult to be followed and in my view, he was inconsistent all throughout. Although there was no proper and actual pleading, yet to establish that on the date when the age of superannuation, his original service record was produced and therefrom, it appeared that his date of birth was June 1929. The original of the service record has been allowed to be taken back, after keeping a xerox copy of the same in the record, which is marked Ext. M-17 and this should be noted that the said workman never took any exception to the production of this record, while cross-examining MW-1. The said workman has not also been able to establish his case or rebut the evidence as came out in examination in chief. One further thing should be noted that the presenting officer, appointed in this case, was not a legal practitioner and as such in terms of Rule 18 of the said Rules or the sub-rules or the provisions thereunder, the said workman was not entitled to be represented by a lawyer in the disciplinary enquiry, as a matter of right.

19. On the basis of the admitted statements by the said workman that he had filed his written statement, although he was asked categorically on the point, I could have disposed of the reference, only on that ground, but I feel that since evidence has been tendered by the parties, both oral and documentary, instead of doing that, I should also discuss them

and for that reason, I have discussed the evidence in details, on consideration whereof and so also the defence as taken by the said workman, I cannot agree that he has been able to establish or prove his case beyond any reasonable doubt. I must also keep it on record that for want of proper pleadings, I have to kept the submissions regarding reaching of superannuation of the workman and have not decided the same.

20. Thus, this reference cannot be answered in the affirmative and in favour of the said workman and so, the same should and is hereby rejected.

21. This is my Award.

Dated, Calcutta,

The 5th February, 1992.

MANASH NATH ROY, Presiding Officer

नई दिल्ली, 20 अप्रैल, 1992

का.पा. 1219.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार रेलवे में नर्सिंग, बिलासपुर के प्रबंधन के संबंध निष्ठाओं और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बिलासपुर के पंचद को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-4-92 को प्राप्त हुआ था।

[एन-41012/53/88-डी-2 बी) पी.टी.]

New Delhi, the 20th April, 1992

S.O. 1219.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Railway Mail Service, Bilaspur and their workmen, which was received by the Central Government on 16-4-92.

[No. L-41012/53/88-D. II(B) (Pt.)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE HON'BLE SHRI V. N. SHUKLA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR (M.P.)

Case No. CGIT/LC(R)(133)/1989

PARTIES :

Employers in relation to the management of Railway Mail Service, Bilaspur (M.P.) and their workman Shri Subhash Lal S/o Shri Chedilal, Chuchayyapara, Ganesh Nagar, Bilaspur (M.P.).

APPEARANCES :

For Workman—Shri R. D. Arya, Advocate.

For Management—Smt. J. Choudhary, Advocate.

INDUSTRY : R.M.S. DISTRICT : Bilaspur (MP)

AWARD

Dated : March 30th, 1992

1. This is a reference made by the Central Government, Ministry of Labour, vide its Notification No. L-41012/53/88-D-2(B) dated 11-7-1989, for adjudication of the following dispute :—

THE SCHEDULE

“Whether the termination of Shri Subhash Lal, S/o Shri Chhedi Lal, outside Kollic, Railway Mail Service, Bilaspur w.e.f. 22-11-87 by the Postal Department is justified? If not, to what relief the workman concerned is entitled?”

2. Facts leading to this case are that the workman, Shri Subhash Lal, worked as Khalasi Collie during the period from 19-6-1984 to 10-12-1986. He was working as loading and unloading collie for mail bags during this period. Thereafter he was engaged as Extra Departmental Mail Carrier from 12-12-1986 to 22-11-1987. His services were terminated without any notice or retrenchment compensation. It is also not disputed that some fresh candidates were re-employed.

3. Workman says that he worked continuously and uninterruptedly except Sundays and Holidays as follows :—

May 1984 to April 1985	310 days
May 1985 to April 1986	302 days
May 1986 to April 1987	334 days
April 1987 to November 1987	236 days

Since the management needed services of some workmen after the termination of his service, fresh candidates viz. Anurullah, R. S. Dewangan and Dilharan Yadav were appointed. This is contrary to law. The workman is, therefore, entitled to be reinstated with all back wages and consequential benefits.

4. Management says that the workman having given notice under Section 80 C.P.C for filing a civil suit this application is not tenable. He is not an employee of the Central Government. If he assumes himself to be the employee of the Central Government the appropriate forum is the Administrative Tribunal. The said workman never worked as regular employee. He was on daily wages as and when required. He worked for the following days :—

June 1984	11 days
July 1984	25 days
August 1984	27 days
September 1984	25 days
October 1984	25 days
November 1984	26 days
January 1985	25 days
February 1985	23 days
March 1985	27 days
April 1985	23 days
May 1985	21 days
June 1985	27 days
July 1985	27 days
August 1985	25 days
September 1985	21 days
October 1985	27 days
November 1985	23 days
December 1985	25 days

January 1986	26 days
February 1986	25 days
March 1986	26 days
April 1986	29 days
May 1986	28 days
June 1986	25 days
July 1986	27 days
August 1986	26 days
September 1986	25 days
October 1986	30 days
November 1986	22 days
December 1986	11 days

From 12-12-1986 he worked as E.D. Mail Man as Chhri Dular Das suggested his name as substitute for working three hours daily. Shri Dular Das took full responsibility for the working of the workman hence he was allowed to work as E.D. Mail Man. He was allowed to work on temporary basis in short term vacancy and as soon as the vacancy is filled up he was reverted to his parent position.

5. From September 1987 he started remaining absent without any excuse, hence Shri Dular Das refused to take the responsibility and suggested the name of Shri Amil Ullah. Since the workman was never appointed question of his termination does not arise. Shri Dular Das has also withdrawn his security. He was working on daily wages as substitute to E.D. employee. E.D. employees are recruited as per Government Orders and in accordance with the Rules. The workman remained absent for following days during the period September 1987 to November 1987 as detailed in Annexure B :—

September, 1987	17 days
October, 1987	31 days
November, 1987	17 days

6. Reference was the issue in this case.

FINDINGS WITH REASONS :

7. No oral or documentary evidence was led by the management. Workman did not produce any document. He filed his affidavit only and he was cross-examined. There is nothing on record to disbelieve his testimony. According to him, he worked as follows :

May 1984 to April 1985	310 days
May 1985 to April 1986	302 days
May 1986 to April 1987	334 days
May 1987 to November 1987	236 days

Workman deposed that no compensation was given to him. He further says that he was in uninterrupted employment. He also says that after his termination, Shri Aminullah, Shri R. S. Dewangan and Shri Dilharan have been employed.

8. When cross-examined this witness has categorically denied that he was ever absent due to illness. He has, however, admitted that he was working as substitute. He further admitted that from 12-12-1986 he worked as E.D. Mail Substitute in place of Maiku Lal. He admits that he was not given any appointment letter. He admits that he worked as Substitute of Mail Man and thereafter he worked as substitute of Shri Dular Das from 1-1-1987 to 22-11-1987. He worked

for three hours per day when he worked as substitute. He has specifically denied that because he fell sick his name was suggested by Shri Dular Das and Amin Ullah was employed in his place.

9. From the above evidence, it is clear that the workman worked from May 1984 to November, 1987. For the period from 12-12-1986 to 22-11-1987 he worked as substitute to E.D. Mail Man. It is not questioned that the workman was daily rated coolie for loading and unloading mail. He worked in the said capacity from 19-6-1984 to 30-12-1986.

10. Obviously, the workman has worked for more than 240 days continuously and uninterruptedly with the management.

11. He was a 'workman' within the meaning of S. 2(s) and the management is an 'industry' within the meaning of S. 2(j) of the Industrial Disputes Act, 1947. Thus merely because the workman has given Notice under Section 80 of C.P.C. he cannot be debarred from pursuing his claim before this Tribunal. That apart, this Tribunal is the forum and not the Administrative Tribunal. Obviously, for these reasons the Government have referred the dispute for adjudication to this Tribunal.

12. There is a clear cut violation of the provision of S. 25F and H of the I.D. Act. Management has failed to prove that the workman started remaining absent. That being so, the workman is entitled to be reinstated.

13. Looking to his period of employment he should be considered for regularisation and confirmation in the category he is entitled to.

14. In the present circumstances, I will not award any back wages. The reference is accordingly answered as follows :—

The termination of Shri Subhash Lal S/o Shri Chhedi Lal, Outside Koolie, Railway Mail Service, Bilaspur; w.e.f. 22-11-1987 by the Postal Department is not justified. He is entitled to be reinstated with continuity in service, but without any back wages. His service should be considered for regularisation and giving him suitable post to which he is entitled. No order as to costs.

V. N. SHUKLA, Presiding Officer

नई दिल्ली, 22 अप्रैल, 1992

का.प्र. 1220.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मध्य रेलवे, भोपाल के प्रबंधसंग्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक प्रतिक्रिया जबलपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-4-92 को प्राप्त हुआ था।

[सं० एन-41012/94/89-इ-II(बी)]

के० बी० बी० उणी टैक अधिकारी

New Delhi, the 21st April, 1992

S.O. 1220.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure, in the industrial dispute bet-

ween the employers in relation to the management of Central Railway, Bhopal and their workmen, which was received by the Central Government on 20-4-92.

[No. L-41012/848/9-D.II-B]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE HON'BLE SHRI V. N. SHUKLA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR

COURT, JABALPUR (M.P.)

CASE NO. CGIT/LC(R)(152)/1990.

PARTIES :

Employers in relation to the management of Divisional Rail Manager (P) & P.W.I.(N), Central Railway, Bhopal (MP) and their workman, Sh. Kamal Kumar S/o Dharu, Ex-Casual Labour, House No. 35, Subhash Ward, Bina, District Sagar (M.P.)

APPEARANCES :

For Workman : Shri R. Menon, Advocate.

For Management : None.

INDUSTRY : Railways DISTRICT : Bhopal(M.P.)

AWARD

Dated : April 3rd, 1992

This is a reference made by the Central Government, Ministry of Labour, vide its Notification No. L-41012/94/89/D.2(B) dated 31-5-1990 for adjudication of the following dispute :—

SCHEDULE

"Whether the termination of Sh. Kamal Kumar S/o Dharu, Ex-Casual Labour w.e.f. 3-12-86 by the Permanent Way Inspector (North) Central Railway, Bhopal is justified or not? If not to what relief the workman is entitled to?"

2. The management despite repeated notices neither sent its statement of claim nor appeared to conduct the case. The was registered on 8-6-1990 and filed for 30-7-1990, 15-10-1990, 26-12-1990, 22-2-991, 4-3-1991, 3-5-1991, 8-7-1991, 27-8-1991, 9-11-1992 and 2-4-1992.

3. On 27-8-1991 the case proceeded ex parte against the management.

4. The case of the workman in brief is that he was working as a Casual Labour under the administrative control of the management in the office of the P.W.I. (North) Central Railway, Bhopal. He worked from 23-5-1985 to 3-12-1986 and his service card was taken back and deposited in the office of the P.W.I.

5. The workman says that despite his constant efforts he was not taken back in service. He has completed 240 days continuous service. His termination amounts to retrenchment simpliciter which is in violation of provisions of Sec. 25F of the I.D. Act. It is void ab initio. The workman has put in more than six months service to attend temporary status and according to the provisions of Railway Establishment

Code he is entitled to benefits of Railway Services Disciplinary & Appeal Rules.

6. The workman is therefore entitled to be reinstated in service with full back wages and all consequential benefits including compensatory costs.

7. As I have already pointed out above, management failed to appear and contest the case. It has not filed written statement as well.

8. The workman has proved his case by filing his own affidavit stating on oath that he was a casual labour under the administrative control of the P.W.I. (North) Central Railway, Bhopal from 23-5-1983 to 3-12-1986 when his services were terminated from 3-12-1986, without any show cause notice or charge-sheet. He has not been paid compensation.

9. From the above evidence, it is established that the workman was a casual labour under the administrative control of P.W.I. (North) Central Railway, Bhopal. He had completed 240 days continuous service. He has neither been given retrenchment notice nor had been paid retrenchment compensation, his termination of service is violative of the provisions of Sec. 25F of the I.D. Act. The action of termination is liable to be quashed and the workman is entitled to be reinstated with all back wages and consequential benefits arising therefrom. Reference is accordingly answered as follows :

The termination of Sh. Kamal Kumar S/o Dharu, Ex-Casual Labour w.e.f. 3-12-1986 by the Permanent Way Inspector (North), Central Railway, Bhopal is not justified. He is entitled to be reinstated with all back wages and consequential benefits arising therefrom. No order as to costs.

V. N. SHUKLA, Presiding Officer

नई दिल्ली, 21 अप्रैल, 1992

का. मा. 1221—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बेहिकल्स फेक्ट्री, जबलपुर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-4-92 को प्राप्त हुआ है:

[सं. एल० 14012/15/89.डो-11 बी]
को. बी० बी० उपांगों, डैस्क अधिकारी

New Delhi, the 21st April, 1992

S.O. 1221. In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Vehicles Factory, Jabalpur and their workmen, which was received by the Central Government on 20-4-92.

[No. L-41012/15/89.D.II.B]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE HON'BLE SHRI V. N. SHUKLA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL - CUM - LABOUR COURT, JABALPUR (M.P.)

CASE No. CGIT/LC(R)(40)/1990

PARTIES :

Employers in relation to the management of Vehicle Factory, Jabalpur and their workman, Shri Satyapal Sharma, House No. 802, Hotel Palace Ke Piche, Bari Omti, Jabalpur (M.P.)

APPEARANCES.

For workman.—Shri R. Menon, Advocate.

For management.—Shri S. S. Jha, Advocate.

INDUSTRY.—Vehicle Factory

DISTRICT.—Jabalpur (M.P.)

AWARD

Dated : April 3rd, 1992

This is a reference made by the Central Government, Ministry of Labour, vide is Notification No. 14012/15/89-D-2(B) Dated 31st January, 1990, for adjudication of the following dispute :—

SCHEDULE

“Whether the action of the management of Vehicle Factory, Jabalpur (M.P.) in removing the service of Shri Satyapal Sharma, Ex-Turner Grade B w.e.f. 14-3-88 is justified? If not, what relief the workman concerned is entitled to?”

2. Facts leading to this case are that Shri Satyapal Sharma was working as Turner Grade B. He was charge-sheeted on 8-7-1986. Domestic enquiry was held against him and his services were terminated with effect from 14-3-1988.

3. Since vide proceedings dated 16-3-1992 the validity of the domestic enquiry has not been questioned therefore determination of Issues No. 1 & 2 does not arise. The enquiry is legal and proper and it is not necessary for the management to lead any evidence. I therefore confine myself to the pleadings relating to narrow point as to whether the punishment was adequate and to what relief the workman is entitled i.e. Issues No. 3, 4 & 5.

4. The workman was charge-sheeted as follows :—

ARTICLES OF CHARGE/ANNEXURE I

Statement of articles framed against Shri Satya Pal Sharma Turner 'B' Grade VFJ T. No. NTM/105103388. That the said Shri Satya Pal Sharma while functioning as Turner 'B' Grade is alleged to have committed :—

“Gross Misconduct—Attempted theft of government property (2 Nos. finished Gear second speed (Main shaft) NP Drg. No. 32251-44000) from inside the factory during lunch hour—Conduct unbecoming of a Government servant.”

ANNEXURE II

Statement of imputations of misconduct or misbehaviour in support of the articles of charge framed against Shri Satya Pal Sharma.

It is alleged that on 06-5-1986 at about 1235 hours during lunch hour the said Shri Satya Pal Sharma, Turner 'B' Grade, VFJ T. No. NTM|105|03388 was found picking up 2 Nos. of finished Gear Second speed (Main shaft) NP drawing No. 32251-44000 from outside NTM Section by the side of with an ulterior motive. It is further alleged that the said Shri Satya Pal Sharma, Turner 'B' Grade, VFJ T. No. NTH|105|03388 on seeing the Durwan threw away the above gears, but Shri Manohar Lal, Durwan, T. No. 814/NIE, Security Office, caught him and brought him with the above item to Gate No. I. Shri Satya Pal Sharma in his statement dated 06-5-1986 recorded in the presence of Orderly Officer has stated that at 09.00 AM on 06-5-1986 he had picked up 2 Nos. of gear second speed from Axle Assy. Nissan with the intention to take it out of the factory and kept hidden the same outside NTM Section by the side of road. He has further stated that on seeing security Durwan he threw the gears and security durwan caught him and brought him to Gate No. I along with the gears. The above action the part of the said Shri Satya Pal Sharma, Turner 'B' Grade VFJ T. No. NTM|105|03388 is highly irregular and subversive of discipline, which amounts to "Gross Misconduct—as mentioned in Annexure I above".

Domestic enquiry was accordingly conducted against him, and he was dismissed.

5. The workman has denied that he committed the alleged misconduct. Accordingly to him, he has been falsely implicated. He has got good service record of past 20 years. He is entitled to be reinstated with all back wages.

6. Management says that he has been rightly punished and the punishment is adequate. Reference is liable to be rejected.

FINDINGS WITH REASONS ON ISSUES NO. 3, 4, & 5 :

7. As stated by Manoharlal in the departmental enquiry in answer to question no. 21 that the articles lying were visible from outside. They were lying by the side of road. This witness further stated in answer to question no. 52 that the delinquent started walking away towards Gate No. 1 keeping he stolen articles in his hand. This appears to be a sort of abnormal behaviour because the road, as the evidence has come, was a busy road. He is the only eye witness who has seen the workman picking up article from the road side. Rest of the witnesses have only said that there was an information that some articles have been taken out, they were detected but were not removed from the place where they were kept by somebody and since the delinquent went there and picked them up and since the alleged articles seized from him it was held that the workman had removed these articles.

8. The workmen has come out with different versions at different times. He suggested in cross-examination to Manoharlal in question No. 65 that the delinquent had gone to urinal to case himself, while he was passing near the spot, he was caught by Manoharlal, he neither picked up gears nor did he throw them away.

9. But the delinquent in his examination has not given any such version, he only denied that he was

involved in the said affair. He has, however, admitted that he has signed his original statement which implicates him and he could not explain as to whether he had given statement before the Orderly Officer under duress. This fact remains unchallenged. But at the same time, it cannot be said that the workman was directly responsible for the alleged theft particularly looking to the conduct that he picked up those articles in hand and was proceeding towards Gate No. 1. In normal course a thief could not have done. The workman had a clean record and in the circumstances, though findings should be interfered for they cannot be said to be perverse, but certainly the punishment awarded is too severe in the entire circumstances of the case. It would be a sufficient punishment if no back wages are granted to the workmen and two increments are withheld. I accordingly record my findings as follows :

Charges of misconduct are proved on the facts of the case. The punishment awarded is neither legal nor proper. He is entitled to be reinstated without back wages and with a punishment of withholding of two increments in fixing his pay on reinstatement. He order as to costs. Award is given accordingly.

V. N. SHUKLA, Presiding Officer

नई दिल्ली, 25 अप्रैल, 1992

का.ग्रा. 1222—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार चीफ इंजीनियर, दक्षिण रेलवे, बंगलूर के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलूर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-4-92 को प्राप्त हुआ था।

[एल-40012/46/91-आई०आर० (डी) यू]
के०वी०बी० उष्णी, डेस्क अधिकारी

New Delhi, the 25th April, 1992

S.O. 1222.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Chief Engineer (Const.), Southern Railway, Bangalore and their workmen, which was received by the Central Government on 23-4-92.

[No. L-40012/36/91-IR-DUI]
K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated this the 16th day of April, 1992.
PRESENT :

Shri M. B. Vishwanath, B.Sc., LL.B.,
Presiding Officer.

CENTRAL REFERENCE NO. 62/91

I Part :

Shri Dilip D. Moraskar,
near Dy. S.P. Office,
Lamani Chawl,
Old Dandeli-581325.

V/s.

II Party :

The Chief Engineer (Const)
Southern Railway,
No. 18, Millers Road,
Bangalore-46.

AWARD

In this reference No. L-40012/46/91-JR(DU) dt. 27-9-1991 made by the Hon'ble Central Government in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) the point for adjudication as per schedule to reference is :—

“Whether the Asst. Engineer, Microwave Maintenance (1) Alrinho, Panaji is justified in terminating the services of Shri Dilip L. Moraskar w.e.f. 1-2-85 ? If not, what relief he is entitled to ?”

2. The I party has filed his claim statement.

3. Notice of this reference was sent to the II party in the usual course. The II party was not represented. The II party did not appear before the Tribunal.

4. By way of abundant precaution, this Tribunal sent notice to the II party by registered post. It is clear from the records that the notice sent by registered post has been served on the II party. The II party, as is clear from the order sheet dt. 14-1-92, has sent a telegram, praying for time. After this, case was adjourned two times to enable the II party to file the counter statement. Even so, the II party has not filed the counter statement and has not engaged anybody to represent the II party. Thereupon the case was posted for I party's evidence.

5. As per the claim statement, the case of the I party is that he joined the services of the II party on 1-11-1980 as casual mazdoor. The work of the I party workman was maintenance and road construction. I party was working in Sangreli Microwave Station. The II party was paying monthly salary to I party. The salary was calculated and paid each month. The I party worked continuously for 1553 days. The II party did not allotted the work to the I party from 31-1-1985. The II party did not give any prior notice to I party. The II party has not paid any compensation. The I party made representations, but the II party has not replied to the representations. The II party has continued the services of those who were junior to the I party. The II party has illegally terminated the services of the I party as a casual labourer. The II party has illegally failed to regularise the I party as a casual labour.

6. As has already been stated, the II party has not filed the counter statement.

7. On behalf of the I party, he has not himself examined.

8. The I party has stated in his evidence that he joined the services of the II party on 1-11-1980 as a casual mazdoor. He has stated that his duty was maintenance and road construction. He has state that he worked in Sangreli Microwave station. I party salary each month. He has stated that he work under II party

1020 GI/92-5

till 31-1-1985. The I party has stated that he has worked in all for 1553 days continuously.

9. The I party has produced Ex. W. 1 which is the authenticated copy of muster roll. This bears the seal of the Department and the II party. The muster roll Ex. W. 1 bears the stamp of truth. It is abundantly clear from Ex. W. 1 that the I party workman worked totally for 1553 days continuously. The I party has stated that the II party did not allot him work from 31-1-1985. The II party did not give any prior notice to I party before refusing to allot work. The II party has not paid any compensation to I party.

10. The I party workman has stated in his evidence that he made representations as per Exs. W. 2 to 4, but there was no reply. The I party workman has produced Ex. W.5, zerex copy. Ex. W. 5 clearly shows shat S.D.O. Telegraphs (Divisional Engineer) gave a letter as per Ex. W. 5. Ex. W. 5 shows that the I party workman had worked continuously from 1-11-80 to 31-1-1985. Ex. W. 5 further shows that the Superior Officer (S.D.O.) directed the II party to absorb him in the Division of the II party. It is obvious that the II party has not followed the directions given in Ex. W. 5.

11. Ex. W. 6 is the gradation list of casual labourers. Ex. W. 6 clearly show that the I party workman was number 2 in the seniority list of casual labourers. The remarks column in Ex. W. 6 further shows that the juniors at Sl. Nos. 3 and 4 have been regularised, overlooking the claims of the I party workman.

12. I have extracted above the evidence of the I party workman. He has produced documents to support his case. The evidence of I party workman is unchallenged. It is clear that the I party workman has worked for more than a year continuously as defined under Sec. 25B of the I.D. Act. Sec. 25F says that a workman, who has been in continuous service for more than a year, cannot be retrenched unless (a) he has been given one month's notice in writing with reasons for retrenchment (b) the workman has been paid compensation at the time of retrenchment (c) that the notice issued to the workman has been served on the appropriate Government.

13. In the instant reference the action of the II party clearly amounts to retrenchment. None of the conditions contemplated under Section 25F has been complied with. So the termination of the services of I party is illegal and has to be set aside.

14. The I party workman has stated in his evidence that II party was paying Rs. 450/- per month as wages. Since the termination of the services of the I party workman is illegal, he is entitled to full back wages.

AWARD

It is hereby declared that the termination of the services of the I party workman (Mazdoor) is illegal. The II party is directed to reinstate the I party with immediate effect and restore his seniority. The II party is directed to regularise the services of the I party workman.

The II party is directed to pay back wages w.e.f. 1-2-1985 at the rate of Rs. 450/- per month.

Reference accepted and award passed as stated herein.

Submit to Government.

(Dictated to Stenographer, taken down by him got typed, corrected and signed by me)

M. B. VISHWANATH, Presiding Officer

नई दिल्ली, 21 अप्रैल, 1992

का.सा. 1223.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूचन में केन्द्रीय सरकार मैसर्स सेंट्रल कोलफील्ड्स लिमिटेड, दकारा के प्रबन्धतंत्र से संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुवध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, (सं. 1), धनबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-4-1992 को प्राप्त हुआ था।

[फाइल सं० एन-20012(226)/89 आई आर कोल]
बी.के. वेणुगोपालन, डेस्क अधिकारी

New Delhi, the 21st April, 1992

S.O. 1223.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, (No. 1) Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Coalfields Ltd. Dakara and their workmen, which was received by the Central Government on 13-4-1992.

[No. L-20012(226)|89-IR(Coal-I)]

V. K. VENUGOPALAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 1, DHANBAD
In the matter of a reference under section 10(1)(d)
of the Industrial Disputes Act, 1947

Reference No 16 of 1990

PARTIES :

Employers in relation to the management of
Churi Colliery of M/s. Central Coalfields
Ltd. P.O. Dokara, Dist. Ranchi.

AND

Their Workmen.

Reference No. 17 of 1990

PARTIES :

Employers in relation to the management of
N.K. Area, Dokara, M/s. Central Coal-
fields Ltd., P.O. Dakara, Dist. Ranchi.

AND

Their Workmen.

Reference No. 18 of 1990

PARTIES :

Employers in relation to the management of
Churi Colliery of M/s. Central Coalfields
Ltd. P.O. Dakara, Dist. Ranchi.

AND

Their Workmen.

PRESENT :

Shri S. K. Mitra, Presiding Officer.

APPEARANCES :

For the Employers.—Shri R.S. Murthy, Advoca-
cate.

For the Workmen.—Shri D. Mukherjee, Advoca-
cate.

STATE : Bihar.

INDUSTRY : Coal.

Dated, the 30th March, 1992

AWARD

These three references were heard analogously at
the instance of the parties arrayed.

Reference No. 16 of 1990

2. By Order No. L-20012|226|89-I.R.(Coal-I),
dated, the 23rd/24th January, 1990, the Central
Government in the Ministry of Labour, has, in exer-
cise of the powers conferred by clause (d) of sub-
section (1) and sub-section (2-A) of section 10 of
the Industrial Disputes Act, 1947, referred the
following dispute for adjudication by this Tribunal :

“Whether the action of the Colliery management
dismissing Shri Ghasita Pashi, Loader from
service w.e.f. 29-4-89 is justified ? If not,
to what relief the workman is entitled ?”

3. The case of the management of Churi Colliery
of M/s. Central Coalfields Ltd., as disclosed in the
written statement-cum-rejoinder, details apart, is
as follows :

The present reference is not maintainable On
receipt of a report of certain acts of misconduct
alleged to have been committed by the concerned
workman and Lorik Chouhan, Loaders, the manage-
ment issued chargesheet dated 6-2-1989 to them,
under the signature of the Suptd. of Mines|Manager
of Churi Colliery. Both these workmen were arrang-
ed on charges for abusing and man-handling B.J.
Podar, Sr. P.O., Churi Colliery on 4-2-89 in front of
Pit Office of Churi Colliery. They were also charg-
ed for having threatened Sri Poddar with dire con-
sequences. Both these workmen submitted their
explanation to the chargesheets issued to them. Their
explanations were duly considered and were not
found to be satisfactory by the Supdt. of Mines|
Colliery Manager of Churi Colliery. The supdt.
directed a domestic enquiry to be held into the
charges framed against these workmen and in the
process appointed Sri S. N. Choubey, Dy. Personnel
Manager, Karkatta Colliery as Enquiry Officer.
The domestic enquiry was held by the Enquiry
Officer into the charges against these workmen and
also another workman, Kuldip Nonia, Clerk Grade-
II, who was involved in the same incident, jointly.
The concerned workmen fully participated in the
enquiry which was held in conformance to the prin-
ciples of natural justice. The Enquiry Officer found
both these concerned workmen guilty and submitted
his report accordingly. The report of the Enquiry
Officer, and the enquiry proceeding were considered
by the Superintendent of Mines|Colliery Manager,
Churi Colliery the Project Officer|Agent. Churi
Colliery and they accepted the findings of the En-
quiry Officer in toto. Considering the gravity of the
misconduct proved against these two workmen, the

Project Officers—Agent dismissed them, from service with immediate effect by order dated 29-4-89. The management has submitted that the enquiry has been conducted in conformance to the principles of natural justice and that the punishment inflicted on the concerned workman is fully justified.

4. The case of the concerned workman, Ghasita Pashi, Loader, as appearing from the written statement submitted by him, is that he was a permanent employee of Churi Colliery and was working as loader for years together. He was issued with a chargesheet dated 6-2-89 issued by the Superintendent Colliery Manager alleging that on 4-2-89 at about 8.50 A.M. he abused and man-handled B. L. Poddar, Senior Personnel Officer, Churi Colliery in front of Pit Office, Churi while on duty and also threatened him with dire consequences. He was charged for misconduct under clause 18(1)(r) of the Certified Standing Orders of the colliery. He submitted his reply to the chargesheet denying the charges. He was on duty in the first shift on that date and was present at the pit. The workers in general were agitated over the illegal deduction of one day's wages from their salary and he tried to pacify agitated worker who became agitated at the sight of B. L. Poddar who reportedly ordered for illegal deduction of wages. He has totally denied to have assaulted and man-handled or threatened B.L. Poddar as alleged in the chargesheet. The employers were all along biased and prejudiced against him for his frequent representations voicing the grievances and difficulties of the workers and hence the management wanted to get rid of him. The enquiry held by the Enquiry Officer was a farce and it was held in violation of the principles of natural justice and denial of reasonable opportunity to him to defend himself. Even on the allegation of assault no evidence was produced by the management to show that F.I.R. was lodged by B.L. Poddar to the police. He has submitted that he has been dismissed from service by the management illegally and prayed that an award be passed reinstating him in service with full back wages, and consequential benefits.

5. In rejoinder to the written statement of the sponsoring union, the management has stated that the domestic enquiry was held in conformance to the principles of natural justice and that the punishment inflicted on the concerned workman is justified. It has been submitted that merely because an F.I.R. was not lodged, it does not ensure to the benefits of the concerned workman.

6. In rejoinder to the written statement of the management, the concerned workman has reiterated the statements of facts as disclosed in his written statement.

Reference No. 18 of 1990

7. By Order No. L-20012/228/89-I.R. (Coal-I), dated, the 24th January, 1990, the Central Government in the Ministry of Labour, has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2-A) of section 10 of the Industrial Dispute Act, 1947, reference the following dispute for adjudication to this Tribunal :

"Whether the action of the management of Churi Colliery, Central Coalfields Ltd. dismissing Shri Lorik Chouhan, Loader

from service w.e.f. 29-4-89 is justified ? If not, to what relief the workman is entitled ?"

8. The skeletal of facts as disclosed in the written statement-cum-rejoinder of the management is similar to those as disclosed in Reference No. 16 of 1990.

9. The case of the concerned workman, Lorik Chouhan, as disclosed in his written statement, is that he was working as permanent loader of Churi Colliery for years together. He was served with a chargesheet dated 6-2-89 alleging that on 4-2-89 at about 8.50 a.m. he abused and man-handled B.L. Poddar, Sr. P.O., Churi colliery in front of Pit office of the colliery. It was also alleged that he threatened Sri Poddar with dire consequences and in the circumstances charges were framed against him under clause 18(1)(r) of the Certified Standing Order of the Colliery. He submitted his reply to the chargesheet denying the charges. The management deducted one day's wages from the salary of the workers without their consent or agreement which created genuine grievances amongst the workmen and no provocation was necessary to raise their voice of protest against the unjustified action causing financial loss to them. The Enquiry Officer held the enquiry in violation of the principles of natural justice. He was not given full opportunity to present his own case. No evidence was produced in the enquiry to show that the Senior P.O. was at all injured nor was any medical report produced to suggest man-handling or injury to Sr. P.O. The management produced no evidence to show that F.I.R. was lodged by the Sr. P.O. The findings of the Enquiry Officer disclose that the Enquiry Officer did not apply his mind independently and his report also perverse. The management dismissed him from service illegally. In the circumstances, the concerned workman has prayed that the management be directed to reinstate him in service with full back wages and consequential benefits.

10. In rejoinder to the written statement of the concerned workman the management has asserted that the domestic enquiry was held fairly and properly and in conformance to the principles of natural justice and that the concerned workman was rightly dismissed from service. The management has denied that it deducted one day's salary of the workman without their consent or agreement.

11. In rejoinder to the written statement of the management, the concerned workman has reiterated the statements of facts as disclosed in his written statement.

Reference No. 17 of 1990

12. By Order No. L-20012/227/89-I.R.(Coal-I), dated the 23rd/24th January, 1990, the Central Government in the Ministry of Labour, has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2-A) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the action of the Colliery management dismissing Shri Kuldin Nonia Clerk Grade-II from service w.e.f. 29-4-89 is justified ? If not, to what relief the workman is entitled ?"

13. The case of the management of N.K. Area of Central Coalfields Ltd., as disclosed in the written statement-cum-rejoinder, is that the present reference is not maintainable. On receipt of a report of certain acts of misconduct alleged to have been committed by Kuldip Nonia, Clerk Grade-II of the office of the G.M., N. K. Area, a chargesheet dated 4/6-2-89 disclosing five counts of charge was issued to him by the General Manager of N.K. Area. He submitted his reply to the charge-sheet which was not found satisfactory. Thereafter domestic enquiry was held by the management in conformance to the principles of natural justice. The Enquiry Officer found the concerned workman guilty of four counts of charges. The report of the Enquiry Officer was considered by the General Manager of N.K. Area. The General Manager accepted the findings of the Enquiry Officer and considering the gravity of the misconduct proved against the concerned workman, he dismissed the concerned workman from service with effect from 29-4-89 by an order issued on 28-4-1989.

14. The case of the concerned workman is that he was working as permanent employee of Central Coalfields Ltd., he was working as Clerk Grade-II in the office of the General Manager N. K. Dakara. He was issued with a charge-sheet dated 4/6-2-89 issued by the General Manager, N.K. Area, alleging that he along with S/Shri Larik Chouhan and Ghasita Passi, Loaders of Churi Colliery, provoked the workers of Churi Colliery, led them to Churi Pit Office, man-handled and assaulted B.L. Podder, Sr. P.O., Churi Colliery, shouted slogans like 'MARO SALEKO' etc. threatened Sri Poddar with dire consequences which resulted in disruption of working, effective production and work in progress. It was also alleged that he was unauthorisedly absenting from duty from 16-1-89 to 4-2-89. He was charged for misconduct under clause 17(1)(g), (i) (n) (r) and (t) of the Model Standing Orders applicable for misconduct under clause 17(1)(g), (i), (n), submitted his reply to the chargesheet denying the to the Industrial Establishments in Coal Mines. He submitted his reply to the chargesheet denying the charges. The employers were all along biased and prejudiced against him for his personal representations and letters dated 27-10-88 and 5-11-88 alleging manipulation of coal stock which was paying the way for black market and loss to the establishment by way of heavy demurrage. The management wanted to get rid of him and appointed Enquiry Officer who was also biased and prejudiced against him. Anyway, the enquiry held by the Enquiry Officer was a farce; it was held not in conformance to the principles of natural justice. The Enquiry Officer did not apply his mind to the fact of the case properly and his report is perverse. The management was biased and prejudiced against him and hence he was dismissed with effect from 29-4-89. He has submitted that the management deducted one day's wages from the salary of the workers without their consent or agreement which created genuine grievances amongst the workmen and no provocation was necessary to raise their voice of protest against the unjustified action of the employer causing financial loss to the workers. He was called from Rai Bazar at about 10 a.m. and on his arrival he jointly talked with the management and announced in association with B.L. Poddar that the wages of the workmen

would not be deducted and the workmen went to their duty after being satisfied. The management did not adduce any evidence in the enquiry to show that Sr. P.O. was injured nor did it produce any medical report to suggest man-handling or injury to him. The management did not produce any evidence to show that an F.I.R. was lodged by the Sr. P.O. In the circumstances, he has prayed that an award be passed to reinstate him, in service with full back wages and consequential benefits.

15. In rejoinder to the written statement of the concerned workmen, the management has reiterated the statements of facts as disclosed in its written statement and submitted that the punishment inflicted on the concerned workman is justified.

16. In rejoinder to the written statement of the management, the concerned workman has reiterated the statement of facts as disclosed in his written statement.

17. At the instance of the management, the fairness and propriety of domestic enquiry was considered as preliminary issue. During the course of hearing on preliminary issue the management laid in evidence a mass of documents which were marked Exts. M-1 to M-16.

At the time of hearing arguments on preliminary issue Shri D. Mukherjee, Advocate for the concerned workman, conceded that the domestic enquiry was held fairly and properly. The materials on record also indicate that the domestic enquiry was held so. Accordingly, it was held that the domestic enquiry was held fairly and properly. Therefore the cases were heard on merits.

18. S/Shri Ghasita Pasi and Lorik Chouhan were working as Loaders of Churi Colliery of M/s. C.C. Ltd. Both these workmen have asserted in their respective written statements that they were permanent employees of the said colliery. These statements of facts have not been denied by the management. Hence, the conclusion is reached that both these workmen were working as Loaders of Churi Colliery and both of them were permanent employees of the said colliery.

Shri Kuldip Nonia was admittedly working as Clerk Grade-II in the office of the G.M., N. K. Area. It is also disclosed from the pleading of the parties that he was a permanent employee of M/s. C.C. Ltd.

19. Both these three workmen have asserted in their pleadings that the management deducted one day's wages from the salary of the workers of the colliery without their consent or agreement which created genuine grievance amongst the workmen. The management has denied this statement of facts, but Shri B. L. Poddar, Sr P.O., Churi Colliery, has admitted in his evidence in domestic enquiry that as per order of Area Headquarters and after discussion with Area level union representative, it was decided that one day's wages, i.e., Sunday dated 22-1-89 should be contributed to Vidya Bikash Kendra as grant. When accosted in cross-examination by the workmen whether it was equitable to deduct money from the wages of workmen with the agreement of union representative, Sri Poddar blurted that the reply could be obtained from the Area Headquarters. The materials on record indicate that the management with the agreement/approval of union representative deducted

one day's wages from the wages of the workmen without having any consultation with them. This deduction of one day's wages is the back drop of the case which must be taken into consideration while deciding the case on merits.

20. Evidence on record discloses that some 200 workmen assembled in front of Churi Pit Office. It has been alleged by the management that S/Shri Kuldeep Nonia, Lorik Chouhan and Ghasita Pashi provoked the workmen of Churi colliery, led them to Churi Pit office, man-handled and assaulted B. L. Poddar, Sr. P.O. of Churi Colliery and also threatened him with dire consequences. Sri Poddar, it appears, substituted a written complaint to the higher management which has not been placed in the proceedings of domestic enquiry file. However, chargesheets were issued against the three concerned workmen. Chargesheet dated 6-2-89 issued against S/Shri Lorik Chouhan and Ghasita Pashi is on similar lines an extract of which is gleamed hereinbelow : (Exts. M-8 and M-9) :

"On 4-2-89 at about 8.50 a.m. (1st shift), you abused and manhandled Shri B. L. Poddar, Sr. P.O., Churi in front of Pit Office, Churi while on duty. You also threatened him for dire consequences.

This constitutes misconduct as per the provisions of clause 18(i)(r) of certified Standing Order of Churi Colliery under which you are governed."

The chargesheet dated 4/6-2-89 (Ext. M-10) was also issued against Kuldeep Nonia an extract of which is gleamed hereinbelow :

- "(1) That on today (4-2-89) at about 8.50 a.m. you alongwith S/Sri Lorik Chouhan and Ghasita Pasi, Loaders of Churi Colliery provoked the workers of Churi Colliery and lead them to Churi Pit Office, manhandled and assaulted Sri B. L. Poddar, Sr. P.O., Churi Colliery.
- (2) That while indulging in the above stated misconduct, you alongwith S/Sri Lorik Chouhan and Ghasita Pasi, Loaders of Churi Colliery shouted "MARO SALE KO. YAH! KATNE KA ORDER DIYA HAI".
- (3) That you alongwith S/Sri Lorik Chouhan and Ghasita Pasi, Loaders of Churi colliery threatened Sri B. L. Poddar, Sr. P.O., Churi with dire consequences.
- (4) That your indulgence in the above noted misconduct resulted in disruption of mine work and affected the production and work in progress.
- (6) That you are unauthorisedly absenting from 16-1-89 till today (4-2-89) without any information to your superiors.

If the above charges are proved, they would constitute a major misconduct under clause 17(i) (g), (i), (n), (r) and (t) of the Model Standing Orders applicable to you even otherwise considering what is misconduct has to be reasonably construed."

S/Shri Ghasita Pasi and Lorik Chouhan submitted their explanations to the chargesheets (Exts. M-11 and Ext. M-11(i)). Their explanations are similar which is re-produced hereinbelow :

"In response to charge sheet-cum-suspension order under reference I am to state as under :—

That the charge sheet levelled against me is totally false and fabricated and has been framed with connivance of the union representatives of Churi Colliery.

That on 4-2-89 I have not uttered a single word to our Sr. P.O. Sri B. L. Poddar.

That on 4-2-89 there was resentment against the workers on the issue of deduction of one day of wages towards Vidya Vikas Kendra, Dakra and about 500 workers assembled near the pit office in the protest of the deduction.

That on the resentment of workers your honour has himself assured the workers that the wages sheet by which deduction is being made is being charged and no deduction is to be made and on your assurance the workers went for their duties.

That the deduction towards VVK was being made with the consent of all the three unions and hence the union representatives felt this resentment otherwise and managed to get the chargesheet-cum-suspension order issued.

Under the circumstances stated above I would request your honour to kindly exonerate me from the charges framed against me and allow me to resume my duties."

It appears from the report of the Enquiry Officer that Kuldeep Nonia also submitted his reply dated 11-2-89 to the chargesheet which has, however, not been placed in domestic enquiry proceeding. Anyway, the statement of Kuldeep Nonia in domestic enquiry proceeding in support of his defence is available on record which is re-produced hereinbelow :

"The 1st charge levelled against me in the chargesheet is totally false and baseless. I had not gone with Lorik Chouhan and Ghasita Pasi and also not assaulted or threatened in any manner to Poddar Sahib.

The 2nd charge is also totally false.

The 3rd charge in the chargesheet is also false.

I have to say about charge no. 4 that I have not caused any type of obstruction in mining operation and production. This charge is false.

I have to say about charge no. 5 that I had taken leave without pay for the treatment of my brother which was duly granted. This charge is false. I shall produce the application duly approved by my Controlling Officer in this regard. I have informed through Post Office about unauthorised leave since 16-1-89. The above-mentioned charge levelled against me is baseless and the management wants to entrap me deliberately, because I had written to the following Project Officer of N. K. Areas, regarding loss of National Property of Rs. 50 crores :—(i) Project Officer, Churi, (ii) Project Officer, K. D., (iii) Project Officer, Dakra, (iv) Project Officer, Karakatta. I have sent copies of my complains

to Sri H. S. Arnoja, G.M. (N.K.), Sri S. K. Choudhary, Chairman-cum-Managing Director, C.C.L., Ranchi and Honourable Sri Yogeshwar Prasad Yogesh, Member of Parliament and Chairman, Labour Cell, All India Congress (I) Committee, New Delhi. I had demanded in my representation that economic criminals indulged in embezzlement of financial National Property should be arrested and the money embezzled by them should be deposited in the Government Fund. This is why I have been entrapped in above mentioned charges. This occurrence occurred or not is not known to me, but the charge-sheet was prepared in pre-planning manner on 4-2-89 indeed. I have to say this much."

It is evident that all the concerned workmen have denied specifically the charges levelled against them.

The management examined S/Shri B. L. Poddar, Sr. P.O., Churi Colliery, Ram Narayan Ram, Havildar, Tripti Pandey, Security Guard, Upendra Kumar, Jr. Executive Training, S. N. Singh, Engineer (E&M) and Sheo Narayan Prasad, P.O. of the colliery. On the other hand, the concerned workmen examined themselves and examined some witnesses, namely, Amar Nath Choudhary, Loader, Nazuddin, Loader, Jagdish Pandey, Drillman and Munu Pasi, Loader.

The Enquiry Officer held joint enquiry and upon consideration of materials on record found Ghasita Pasi and Lorik Chouhan guilty of the charges levelled against them and submitted a report accordingly. He also found Kuldip Nonia guilty of the first four counts of charges and submitted another report. The management, after consideration of the report of the Enquiry Officer and materials on record dismissed all the three concerned workmen from service by separate orders. Kuldip Nonia was dismissed from service with effect from 29-4-89 (Ext. M-15); Lorik Chouhan and Ghasita Pasi were dismissed from service with immediate effect by order dated 29-4-89 (Ext. M-16). Thereafter these industrial disputes were raised by the concerned workmen. I will now consider the evidence on record in order to ascertain if the Enquiry Officer was justified in holding the concerned workmen guilty of the charges levelled against them and consequently whether the action of the management in dismissing the concerned workmen from service is justified or not.

21. It appears that B. L. Poddar, Sr. P.O. submitted a complain to the higher management specifying the acts of misconduct committed by the concerned workmen, but this complain has not been produced before me.

Sri Poddar in his evidence before the Enquiry Officer stated that on 4-2-1989 at 8.45 a.m. he received a message that Manjhi Saheb S.O.M. had called him at Churi Pit office and when he reached there he found some 200 workmen present there and as soon as he came out of the jeep, Kuldip Nonia, Lorik Chouhan and Ghasita Pasi came up to him and said "MARO SALE KO" ESI NE KATWANE KA ORDER DIA HAI" and they assaulted and manhandled him by pushing and jostling. His evidence further discloses that S/Shri Upendra Kumar, S. N. Singh, Sheo Narayan Prasad, Tripti Pandey and Ram Narayan Ram who were standing on the Verandah of Pit office cleared the mob and protected

him. He further stated that he complained Manjhi Saheb and reported the matter to the Project Officer, Churi Colliery. In cross-examination he has disclosed that as per order of the Area Head Quarter and with discussion with Area level union representatives it was decided that one day's wages (Sunday 22-1-89) should be contributed by the workmen to Vidya Bikash Kendra, Dakra as grant. Ram Narayan Ram, Havildar, did not support the statement of Sri Poddar of his having been assaulted or abused by the concerned workmen. He stated that there was uproar at the Pit Office of the Manager and he saw a mob of 200 to 250 persons and that they were demanding their wages. Tripti Pandey, Security Guard, stated that it was Kuldip Nonia who said "MARO SALE KO, YAHEE NE PAISA KATWAYA HAI" and when Sri Poddar came to the Pit Office Ghasita Pasi and Lorik Chouhan started pushing, jostling and assaulting Sri Poddar. This witness has not stated how Ghasita Pasi and Lorik Chouhan assaulted Sri Poddar. His statement that Sri Poddar was assaulted by Ghasita Pasi and Lorik Chouhan has not been supported by Ram Narayan Ram, Havildar. Upendra Kumar, Jr. Executive Training, stated that when B.L. Poddar reached Pit office there was a uproar "MARO SALE KO ISI NE PAISE KATWAYA HAI" and in the meantime pushing and jostling was started and the concerned workmen were prominent amongst pushers and jostlers. The evidence of this witness does not indicate that the concerned workmen instigated the other workmen. It appears from evidence that some 200 to 250 workmen were present on the spot. These workmen were definitely restive as one day's wages from their wages was deducted by the management. It is quite natural that when the workmen were in restive mood over deduction of their wages and when Sri Poddar reached the spot there might be some jostling and pushing, but that cannot be considered as an assault on him. S. N. Singh has simply stated that the workmen on seeing Sri Poddar shouted loudly "MARO SALE KO" and when Sri Poddar was going through the mob there was pushing and jostling. The statement of Sheo Narayan Prasad indicates that as soon as Sri Poddar came down from the jeep, the workers encircled him and began speaking "VAHEE PAISA KATWAYA HAIN ENHI KO MARO" and Kuldip Nonia, the concerned workman, was in front of the workers.

Thus, it is evident from the evidence on record that the charge of assault and threat as levelled against S/Shri Ghasita Pasi and Lorik Chouhan has not been proved at all. The evidence on record does not indicate that Kuldip Nonia provoked the workers of Churi Colliery, led them to Churi Pit office, manhandled and assaulted B. L. Poddar or that he abused Sri Poddar. There is also no evidence on record to indicate that he indulged in misconduct aforesaid which resulted in disruption of mines work and affected production and work in progress. The Enquiry Officer has not found him guilty of the charge of unauthorised absence from duty.

22. The management has pleaded in its pleading that regard being had to the gravity of offence the concerned workmen were dismissed from service. This indicates that the incident was of a grave nature. But the management has failed to produce any document to show that the matter was reported to the Law and Order authorities. The management has also failed to prove by producing medical evidence that Sri

Podar received any injury whatsoever major or minor during the course of occurrence.

The concerned workmen in their testimony had disclaimed to have committed any misconduct as alleged by the management. The witnesses examined by them also supported their stance. In the circumstances, I have no hesitation to come to the conclusion that the Enquiry Officer was not justified in holding the concerned workmen guilty of the charges levelled against them, especially under the circumstances when the workmen of the colliery were in an agitated mood over deduction of their one day's wages as contribution to Institution.

23. Hence, I come to the conclusion that the charges against the concerned workmen have not been proved and consequently the action of the management in dismissing them from service must be set aside and they should be reinstated in service with full back wages.

24. Accordingly, the following award is rendered—

Reference No. 16 of 1990

the action of the Colliery management in dismissing Shri Ghasita Pashi, Loader, from service with effect from 29-4-89 is not justified. The management is directed to reinstate him in service with effect from the date of his dismissal and to pay him full back wages from the date of his dismissal from service till he is reinstated.

Reference No. 17 of 1990

the action of the Colliery management in dismissing Shri Kuldip Nonia, Clerk Grade-II from service with effect from 29-4-89 is not justified. The management is directed to reinstate him in service with effect from the date of his dismissal and to pay him full back wages from the date of his dismissal from service till he is reinstated.

Reference No. 18 of 1990

the action of the management of Churi Colliery, Central Coalfields Ltd. in dismissing Shri Lorik Chouhan, loader from service with effect from 29-4-1989 is not justified. The management is directed to reinstate him in service with effect from the date of his dismissal and to pay him full back wages from the date of his dismissal from service till he is reinstated.

The management is directed to reinstate all the concerned workmen in service within one month from the date of publication of the award and the concerned workmen are also directed to report for duties within the period prescribed.

In the circumstances of the case, I award no cost.

S. K. MITRA, Presiding Officer

नई दिल्ली, 23 अप्रैल, 1992

का.शा. 1224.—नोहू ग्रुपस् खान, मैगनीज ग्रुपस् खान और फ्रीम ग्रुपस् खान श्रम कल्याण निधि नियमावली, 1978 के नियम 3 के उप-नियम (2) के साथ पठित लोहू ग्रुपस् खान, मैगनीज ग्रुपस् खान और फ्रीम ग्रुपस् खान श्रम कल्याण निधि अधिनियम, 1976 (1976 का 61) की धारा 5 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एनडू द्वारा भारत सरकार श्रम मंत्रालय के का.शा. 2847 दिनांक 24 अक्टूबर, 1991, जो कि भारत के राजपत्र के भाग II, खण्ड 3, उप-खण्ड (ii) दिनांक 9 नवम्बर, 1991 के पृष्ठ संख्या 4355 से 4356 पर प्रकाशित है में निम्नलिखित संशोधन करती है, अर्थात् :—

“पर्यक्त अधिसूचना की क्रम संख्या 13 और उससे संबंधित प्रविष्टि के स्थान पर निम्नलिखित क्रम संख्या तथा प्रविष्टि प्रतिस्थापित की जायेगी, अर्थात् :—

“13. कल्याण प्रशासक—सचिव”

श्रम कल्याण संगठन,

कारोपनूर।

[स.यू. 19012(10)/88-डब्ल्यू-II(सी)]

बी.डी. नागर, अवसर सचिव

New Delhi, the 23rd April, 1992

S.O. 1224.—In exercise of the powers conferred by section 5 of the Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Fund Act, 1976 (61 of 1976), read with sub-rule (2) of rule 3 of the Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Fund Rules, 1978, the Central Government hereby makes the following amendment in the notification of the Government of India in the Ministry of Labour number S.O. 2847 dated the 24th October, 1991, published at pages 4355 to 4356 of the Gazette of India, Part II, Section 3, sub-section (ii), dated the 9th November, 1991, namely :—

In the said notification, for serial number 13 and the entry relating thereto the following serial number and entry shall be substituted, namely :—

“13. Welfare Administrator, Labour Welfare Organisation, Kariganur—Secretary”

[No. U-19012(10)/88-W.II(C)]

V. D. NAGAR, Under Secy.

नई दिल्ली, 24 अप्रैल, 1992

का.शा. 1225.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एनडू द्वारा 1-5-92 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय-4 धारा 44 और 45 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है और अध्याय 5 और 6 [धारा 76 की उपधारा (1) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबन्ध राजस्थान राज्य के निम्नलिखित क्षेत्र में प्रवृत्त होंगे, अर्थात् :—

“जिला जयपुर में तहसील सांगानेर में राजस्व ग्राम मदरामपुरा के अन्तर्गत आने वाले क्षेत्र।

[संख्या एम-38013/8/92-एम. एम.-I)]

जे.पी. शुक्ला, अवसर सचिव

New Delhi, the 24th April, 1992

S.O. 1225.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby appoints the 1st May, 1992 as the date on which the provisions of Chapter IV (except sections 44 and 45 which have already been brought into force) and Chapter V and VI (except sub-section (1) of section 76 and sections 77, 78, 79 and 81 which have already been brought into force) of the said Act shall come into force in the following areas in the State of Rajasthan namely :—

“The areas comprising the Revenue village of Madaram Pura in Tehsil Sanganeer, District Jaipur.”

[No. S-38013/8/92-S.S.I.]

J. P. SHUKLA, Under Secy.

